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[Two Sessions]

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New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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Presidential Documents

Title 3—

The President

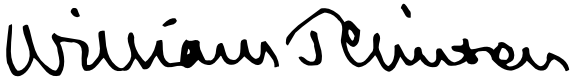
Presidential Determination No. 96–6 of December 6, 1995

Assistance Program for New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to Section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I–V of Public Law 103–87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, December 6, 1995.

MEMORANDUM OF JUSTIFICATION REGARDING CERTIFICATION UNDER SECTION 577 OF THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1994 (TITLES I–V OF PUBLIC LAW 103–87)

There continues to be active and substantial progress on the issue of Russian and CIS troop withdrawal from the Baltics since the President's previous determination under Section 577 ''of substantial progress'' on June 6, 1995.

Since the last determination, the troop withdrawal agreement between the Russian Federation and Estonia was ratified by the Russian State Duma on July 21, 1995, and endorsed by the Federation Council on October 4. Russian President Boris Yeltsin signed the federal law on ratification of the treaty on October 13. The agreement awaits ratification by the Estonian legislature. As noted previously, the troop withdrawal agreement between the Russian Federation and Latvia has been ratified by both countries, the documents of ratification having been exchanged on February 27, 1995.

By its terms, Section 577 remains in force until the President certifies to the Congress under Section 577(b) that all Russian and CIS armed forces have been withdrawn from Latvia and Estonia, or that the status of those armed forces has been otherwise resolved by mutual agreement of the parties. The Section 577(b) certification is not being made at this time, pending ratification by Estonia of the agreement between the Russian Federation and Estonia.

The residual issues remaining between Russia and Latvia and Russia and Estonia relating to troop withdrawals continue to be primarily political and social rather than military. In particular, there continues to be the question of Russian/CIS military personnel demobilized in place before August 31, 1994, when all active duty military personnel and equipment were

withdrawn from Estonia and Latvia according to agreement. As noted previously, the lack of precise data for determining the number of troops demobilized in place, combined with certain ambiguities in the agreements, contribute to the difficulty of resolving these residual issues. Humanitarian concerns continue to constitute another factor. Since the June 6, 1995 determination, the parties have actively worked on both bilateral and multilateral levels to resolve these residual issues. In particular, they have used the OSCE Permanent Council and OSCE missions as fora for raising, and working through, their differences.

Latvia and Russia continue to review lists of demobilized officers in an orderly manner to clarify the status of these individuals. In September 1995, Russia submitted updated lists totaling 1238 former Russian military personnel whose status is still unresolved. The Latvians have told the OSCE Mission to Latvia that they believe another 163, outside these lists, reside in Latvia illegally. Of the 1238 on the Russian lists, Russia has committed to repatriating 401 by the end of 1995. In addition, since the last determination, the Russians have recognized the need for individual case-by-case review of a second major category of the 1238, comprised of 771 cases. The Russians have redesignated the category ''those claiming to have the right to stay,'' rather than those ''having the right to stay.'' In noting the progress the two sides have made in resolving the issue of demobilized officers, the OSCE Mission has also commended the political will shown by the Latvian Government in agreeing to investigate each claim to stay with appropriate care. Latvian President Ulmanis stated in September that, despite their serious foreign policy disagreements, Latvia and Russia are continuing to develop good-neighborly bilateral relations.

The bilateral dialogue between Russia and Estonia has broadened and deepened since the last determination. On October 11, Russian Foreign Minister Kozyrev and Estonian Foreign Minister Riivo Sinijarv met in Helsinki to discuss, among other issues, the Estonian ratification process for the July 1994 agreements on troop withdrawal and Russian military pensioners. Sinijarv termed the meeting ''very constructive and relaxed,'' and noted that despite difficulties, the two countries had achieved certain progress in the normalization of Estonian-Russian relations. In November, a group of Russian State Duma members visited the Estonian capital of Tallinn and discussed with their counterparts the schedule for ratification by Estonia of the bilateral agreements signed in July 1994. In mid-November during UNESCO's 50th anniversary celebrations in Paris, Estonian President Lennart Meri noted that ''relations between Russia and Estonia have already passed their most difficult stage.'' He highlighted the progress made on the border talks as an example of this new phase in relations and stated that he viewed future relations with Russia with ''optimism.''

The decommissioning of the Paldiski facility in Estonia has also been cited by both sides as a major bilateral success. In his 50th UNGA address, Foreign Minister Sinijarv noted that on September 26 ''the final remnant of occupation, in the form of the former Soviet nuclear submarine training facility at Paldiski, will be turned over to Estonian authorities by civilian Russian dismantling specialists. I take this opportunity to acknowledge Estonia's satisfaction with the Russian Federation's having fulfilled its commitments in this regard, as mandated by the agreement signed by Russia and Estonia on 30 July 1994.''

Russia and Estonia continue to use the OSCE Permanent Council mechanism to raise issues of dispute. The Russians, for example, chose to use the October 12 meeting of the Permanent Council to express concern over a decision by the Estonian Parliament to remove from the week's agenda ratification of the bilateral Russian-Estonian agreement on military pensioners. Estonia replied that the Estonian government had resigned on October 11 and that this issue took precedence over ratification of the bilateral agreement. Since the October 12 OSCE meeting, the Estonian Parliament has been reviewing the package of troop withdrawal agreements for ratifica-

tion as a high priority agenda item. On November 29, the package of agreements passed the first of three required readings in the Estonian Parliament. The OSCE has also appointed a representative to the Commission dealing with the granting of residence permits for Russian military pensioners desiring to stay in Estonia. Applications are being submitted and processed on a case-by-case basis under this program.

In U.S. discussions with Russian, Latvian, and Estonian officials, the residual troop withdrawal issue no longer receives the priority it once did as an outstanding problem between Russia and Latvia and Russia and Estonia. Further, local press commentators in the leadup to the September 30–October 1 elections in Latvia pointed out that normality had come at last to Latvia. Troop withdrawal concerns had ceased to be a key issue for the populace; integration into European institutions as well as bread and butter issues had taken on greater importance.

Russia and Latvia and Russia and Estonia continue to recognize the importance of dialogue and diplomacy in resolving the residual issues relating to troop withdrawals. They continue to look for practical ways, including through international mechanisms, to solve their differences and have moved significantly towards normal bilateral relations. In a November 7 speech to the opening session of the sixth Saeima in Riga, Latvian President Ulmanis eloquently defined the challenge and the goal facing the parties: ''To find a fruitful balance for this mutual tension of political factors is both a task and a challenge to the creative and diplomatic abilities of our politicians.''

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Rules and Regulations

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Wednesday, December 20, 1995

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.

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DEPARTMENT OF ENERGY

10 CFR Part 600

[Docket No. PO–RM–95–101]

Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending its Financial Assistance Rules by adding a final statement of policy, including procedures and interpretations, to guide DOE officials in making determinations required by section 2306 of the Energy Policy Act of 1992 (EPACT) concerning eligibility to receive financial assistance under DOE programs authorized by Titles XX through XXIII of EPACT.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Marlay, Office of Science Policy (Mail Stop PO–81), Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–3900. Paul Sherry, Esq., Office of General Counsel (Mail Stop GC–61), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2440.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Procedural Requirements

I. Background

This notice sets forth a final general statement of policy, including procedures and interpretations, concerning implementation of the requirements of section 2306 of EPACT (42 U.S.C. 13525). This general statement of policy will guide implementing DOE officials in making a special eligibility determination prerequisite to a financial assistance award to a company under Titles XX through XXIII of EPACT. Those titles relate to research, development, demonstration and commercialization programs in diverse areas of energy efficiency, energy supply, and related basic research.

Section 2306 provides for a two-part determination. An applicant must be found to satisfy the conditions of both parts in order to be eligible. The first part, set out in section 2306(1), involves a finding with regard to whether an award of financial assistance to the applicant would be in the economic interest of the United States. 42 U.S.C. 13525(1). The statute provides some illustrative examples of the kinds of evidence that would support such a finding: investments in the United States in research, development, and manufacturing; significant contributions to employment in the United States; and agreements, with respect to any technology arising from financial assistance provided, to promote the manufacture within the United States of products resulting from that technology and to procure parts and materials for such manufacture from competitive suppliers.

The second part of the determination, section 2306(2), involves two subparts, one of which must be satisfied. 42 U.S.C. 13525(2). The first subpart is satisfied if the applicant is a ''United States-owned company.'' The second subpart is satisfied if the applicant is found to be incorporated in the United States and the applicant's parent company is incorporated in a foreign country that: (a) affords opportunities to United States-owned companies comparable to those afforded to any other company to participate in government-supported joint ventures in energy research and development; (b) affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to general investment opportunities; and (c) affords adequate and effective protection of intellectual property rights owned by United States-owned companies.

The current list of covered programs is set forth below. This list will be updated as appropriate and published in the Federal Register to account for changes in activities undertaken in relation to Titles XX through XXIII of EPACT.

Covered programs	EPACT sections
Fossil energy R & D Petroleum: All Programs	§ 2011, 2012
Gas: Natural Gas Research	§ 2013–2015, 2112
All programs, including:	
Resource & Extraction	§ 2013, 2014
Delivery & Storage	§ 2013, 2014
Utilization	§ 2013, 2014
Turbines	§ 2112
Environmental Research & Regulatory Analysis	§ 2013, 2014
Mid-continent Energy Research Center	§ 2013, 2015
Fuel cells:	§ 2115
All Programs, including:	
Advanced Research	§ 2115
Molten Carbonate Systems	§ 2115
Advanced Concepts	§ 2115
Energy conservation:	
Transportation	§ 2021–2025, 2027, 2028, 2112
Alternative Fuels Utilization	§ 2021, 2023
Materials Development	§ 2021

Covered programs	EPACT sections
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propulsion	§ 2021, 2025
Development Implementation & Deployment	§ 2021
Management	§ 2021
Capital Equipment	§ 2021
Advanced Automotive Fuel Economy	§ 2021, 2022
Biofuels User Facility	§ 2021, 2024
Advanced Diesel Emissions Program	§ 2021, 2027
Telecommuting Study	§ 2021, 2028
Utility: All programs	§ 2101
Industry	§ 2101–2108
All Programs, including:	
Industrial Wastes	§ 2101
Municipal Solid Wastes	§ 2101
Cogeneration	§ 2101
Electric Drives	§ 2101, 2105
Materials and Metals Processing	§ 2101, 2107
Other Process Efficiency	§ 2101
Process Heating & Cooling	§ 2101, 2102
Implementation & Deployment	§ 2101
Management	§ 2101
Capital Equipment	§ 2101
National Advanced Manufacturing Tech	§ 2101, 2202
Initiative Pulp & Paper	§ 2101, 2103
Steel, Aluminum, and Metal Research	§ 2101, 2106
Energy Efficient Environmental Program	§ 2101, 2108
Buildings	§ 2101–2108
All Programs, including:	
Federal Energy Management Program	§ 2101
Implementation & Deployment	§ 2101
Management and Planning	§ 2101
Capital Equipment	§ 2101
Advanced Buildings for 2005	§ 2101, 2104
Building Systems	§ 2101
Building Envelope	§ 2101
Building Equipment	§ 2101
Codes and Standards	§ 2101
Energy Supply R & D: Energy Research:.	
Fusion Energy	§ 2114
All Programs, including:	
Confinement Systems	§ 2114
Development & Technology	§ 2114
Applied Plasma Physics	§ 2114
Planning & Projects	§ 2114
Inertial Fusion Energy	§ 2114
Program Direction-Op Exp	§ 2114
Capital Equipment & Construction	§ 2114
Basic Energy Sciences	§ 2203
All Activities, including:	
Materials Sciences	§ 2203
Chemical Sciences	§ 2203
Energy Biosciences	§ 2203
Engineering & Geosciences	§ 2203
Applied Math Sciences	§ 2203, 2204
Advanced Energy Projects	§ 2203
Program Direction	§ 2203
Capital Equipment	§ 2203
Advisory & Oversight/Program Direction	§ 2203
Advanced Neutron Source	§ 2203
Energy Research Analysis	§ 2203
University & Science Education Programs	§ 2203
Experimental Program to Stimulate Competitive Research	§ 2203
Laboratory Technology Transfer	§ 2203
Multi-Program Laboratory Support	§ 2203
Nuclear Energy:	
Light Water Reactor	§ 2123, 2126
Advanced Reactor R & D	§ 2121, 2122, 2124, 2126
Facilities	§ 2126
Solar & Renewables:	
Solar & Other Energy	§ 2021, 2026, 2111, 2117
All Programs, including:	
Photovoltaics	§ 2111
Biofuels	§ 2021, 2013, 2024, 2111
Solar Technology Transfer	§ 2111

Covered programs	EPACT sections
Program Direction—Other Solar Energy	§ 2111
Solar Building Technology Research	§ 2111, 2104
Solar Thermal Energy Systems	§ 2111
Wind Energy Systems	§ 2111
Ocean Energy Systems	§ 2111
International Solar Energy Program	§ 2111
Resource Assessment	§ 2111
Program Support	§ 2111
Geothermal	§ 2111
Hydrogen Research	§ 2026
Electric Energy Systems including: Superconductivity	§ 2117, 2111
Energy Storage Systems	§ 2111
Environmental Rest & Waste Management:	
Facility Transition—Fast Flux Test Facility	§ 2116
Civilian Waste R & D	§ 2113
Electric & Magnetic Fields Research and Public Dissemination Program	§ 2118
Spark M. Matsunaga Renewable Energy & Ocean Technology Center	§ 2111, 2119

On February 23, 1995, DOE published a proposed statement of policy for public comment in the Federal Register (60 FR 10296). The public comment period ended April 24, 1995. The Department received seven comments. In addition, a public hearing was held on April 19, 1995, in Washington, DC. Comments were received from the Delegation of the European Commission, individual corporations, and associations representing corporations and commercial interests. The official rulemaking record is available in the Department's Freedom of Information reading room.

II. Discussion of Public Comments

A. Applicability of Eligibility Requirements

One commenter questioned the Department's overall approach of implementing section 2306 through a ''general statement of policy'' which allows DOE officials considerable flexibility. The commenter noted that § 2306 is mandatory, not advisory, and that the Department's interpretation of what constitutes compliance with this provision should also be mandatory in the form of a final binding rule. In addition, the commenter expressed the view that allowing discretion in applying section 2306 will lead to arbitrary and inconsistent results.

The policy statement recognizes the limitations of DOE's discretion by announcing that ''Department officials must, in all cases, comply with the requirements of the statute.'' The Department has decided to adopt a general statement of policy which provides uniform guidance for DOE officials and potential DOE program applicants, but allows implementing officials discretion in applying this policy to a large number of programs in diverse energy areas.

Most importantly, the Department's general statement of policy sets forth a reasonable decisionmaking framework for the purpose of allowing full compliance with—not avoidance of—section 2306. This decisionmaking framework has been designed to avoid arbitrary decisionmaking by ensuring that all implementation actions under section 2306 comply with the requirements of that provision.

Several comments were received concerning the ''retroactive'' application of section 2306 by the Department. One commenter asserted that the Department should not retroactively impose conditions on program participants granted awards prior to the enactment of EPACT.

Section 2306, which governs the award of financial assistance covered by Titles XX to XXIII of EPACT, became effective on October 24, 1992. The eligibility requirements will not be applied to financial assistance awards made prior to the effective date of the Act. This policy statement will apply to any new financial assistance awards or renewals of such awards under covered programs made after the effective date stated in this notice.

Several commenters also raised retroactivity issues with respect to which programs are covered. One commenter asserted that section 2306 applies to programs authorized by EPACT but commenced prior to the passage of that Act. Another commenter disagreed and asserted that DOE improperly proposed to apply section 2306 to programs that pre-date the enactment of EPACT. Departmental programs that pre-date EPACT but are referenced in Titles XX through XXIII of the Act will be considered covered programs as of the effective date of the Act.

Two commenters expressed opposing views with respect to the scope of programs ''under Titles XX through XXIII'' of EPACT. One commenter asserted that the requirements of section 2306 should be applied broadly. Another commenter asserted that it would be inappropriate to apply section 2306 to programs not specifically authorized under titles XX through XXIII of EPACT. The Department has developed the list of covered programs set forth above to include both activities specifically authorized by Titles XX through XXIII of EPACT and other activities that are reasonably judged to be undertaken pursuant to program directions set out in those titles.

B. Definitions

Two comments were received concerning the proposed definition of ''financial assistance.'' One commenter agreed with the Department's proposal to define ''financial assistance'' to include grants and cooperative agreements and not contracts, subcontracts, and cooperative research and development agreements (CRADAs). Another commenter argued that the exclusion of contracts and subcontracts from the definition thwarts the intent of Congress and reduces the applicability of the statute to ''near zero.''

The term ''financial assistance'' is not defined in EPACT, and the legislative history to that Act is silent as to its intended meaning. The Department has chosen to apply its pre-existing definition of the term ''financial assistance'', found at 10 CFR 600.3, which includes grants and cooperative agreements but does not include contracts, subcontracts or CRADAs. This definition is consistent with the usual connotations of the term.

The Department invited comment on the definition of ''company'' in order to assess whether it was appropriate to exclude all non-profit organizations

from that definition, or whether it would be more appropriate to exclude a narrower class of non-profit educational and charitable organizations. One commenter expressed the view that excluding all non-profit organizations from the definition of that term would invite efforts to circumvent the purpose of section 2306.

The Department has concluded that the definition of ''company'' should not exclude all not-for-profit organizations, but should instead exclude educational or charitable organizations.

Accordingly, § 600.501 defines ''company'' as ''any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(3)).'' This definition is intended to include corporations, general or limited partnerships, sole proprietorships, joint ventures, and other forms of business entities. It is not intended to include governmental entities. Not-for-profit corporations and associations are included unless they are educational or other institutions qualified under section 501(c)(3) of the Internal Revenue Code.

One commenter noted that the term ''affiliates'' is not defined in the proposed rule and suggested that a definition be added. Section 600.503, in which the term is used, simply provides that investment and employment in the U.S. by affiliates may be considered in assessing whether the applicant's participation is in the economic interests of the U.S. Accordingly, the Department does not believe that a technical definition of ''affiliates'' is necessary.

Another commenter suggested a change to the definition of ''parent company'' to clarify that, in the case of indirect control, each company in a series must have a majority control of its subsidiary. Such a rigid approach could permit use of organizational structures designed to circumvent effective review under section 2306. Therefore, the definition has not been modified.

C. Economic Interest Determination

Several comments were received concerning the scope of Departmental discretion in determining whether a company's participation is in the economic interest of the United States. One commenter, asserting that DOE has substantial discretion in this area, suggested that this determination should include a comparison of the records of applicant companies in particular areas, for example, in the area of providing U.S. jobs. A second commenter asserted that economic interest assessments must not be based simply on static comparisons among applicants. This same commenter emphasized that the Department should be flexible in the factors it considers in every case and should consider all available evidence in making its economic interest determination. A third commenter agreed, taking the position that the Department's economic interest determination should not be too narrowly focused. As an example, the third commenter noted that in certain cases there could be a clear economic benefit to the United States even though some prospective awardees have no presence in the United States and could not be expected to have any in the future.

Determinations concerning the economic interest of the United States will be based on consideration of all available evidence. The statement of policy provides that any evidence that shows that an award would be in the economic interest of the United States can be considered. The Department also agrees with the position that economic interest assessments should not be based on comparisons among applicants.

Several commenters cautioned that, in applying the economic interest criteria, DOE should not impose performance requirements or other similar conditions on applicants, directly or indirectly. Some of these comments refer to U.S. Government obligations under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Trade-Related Investment Measures, which prohibit import substitution requirements and local purchasing requirements, respectively. The policy statement does not impose performance requirements or other similar conditions on applicants.

D. Section 2306(2)(B) Determination

One commenter recommended that the sole basis for DOE's finding should be the outcome of proceedings conducted by the Office of the United States Trade Representative under section 301 of the Trade Act of 1974, as amended. This commenter notes that the Congress and the Executive Branch have established a comprehensive system of identifying, evaluating and eliminating foreign trade barriers under section 301. This commenter argues that such an approach would ensure that all concerned parties have an opportunity to express views; would ensure predictable results; and would ensure that DOE's finding supports U.S. market-opening efforts. Another commenter argued that DOE should consider evidence of compliance or non-compliance with laws and international agreements affecting trade, and should not limit its analysis to the outcome of section 301 proceedings. DOE agrees that section 301 proceedings are an important factor in making the necessary finding, but consideration of relevant evidence that is not produced as a result of a section 301 proceeding also is appropriate.

One commenter urged DOE to consider whether U.S.-owned firms have non-discriminatory market access in making its determinations. The criteria contained in section 2306(2)(B) of EPACT address comparable access to research opportunities, comparable investment opportunities and adequate and effective intellectual property protections. Section 2306(2)(B) does not provide for DOE to consider whether U.S.-owned firms have access to comparable trade opportunities in the relevant foreign country.

E. Comparable Access to Research Opportunities

One commenter stated that it would defy common sense to find that a parent company incorporated in a country with no similar research program satisfies the requirements of section 2306. At the public hearing, the same commenter stated that section 2306 of EPACT requires DOE to disqualify any applicant if the applicant is headquartered in a country that has no comparable research program.

Section 2306(2)(B) directs DOE to consider whether a foreign country affords U.S. companies ''opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act.'' 42 U.S.C. 13525(2)(B). This finding relates to whether there is discrimination against U.S.-owned firms relative to other firms with regard to access to any foreign-government-sponsored programs comparable to those covered under EPACT. The law does not provide for a finding that a foreign country has comparable energy research and development programs.

F. Comparable Access to Investment Opportunities

One commenter stated that DOE should not limit its review to whether U.S.-owned firms have a legal right to foreign investment opportunities under international agreements. The commenter stated that DOE should not find an affected applicant eligible to participate in a DOE covered program unless U.S. firms have actual investment opportunities in the country of the applicant's parent company that are comparable to the opportunities

available to foreign investors in the United States. Another commenter stated that DOE's main source of information on investment barriers should be the National Trade Estimates Report on Foreign Trade Barriers published annually by the Office of the United States Trade Representative.

Section 2306(2)(B) provides that DOE must determine whether the country ''affords to United States-owned companies local investment opportunities comparable to those afforded to any other company.'' 42 U.S.C. 13525(2)(B). DOE will consider available information on the legal regimes and de facto practices governing foreign investment in relevant countries. The statement of policy states that DOE may consider obligations of the country involved and local investment opportunities afforded to U.S.-owned companies in that country. DOE will consult with other Federal government agencies, as appropriate.

G. Protection of Intellectual Property Rights

One commenter stated that DOE should use the annual National Trade Estimate Reports on Foreign Trade Barriers published by the Office of the U.S. Trade Representative as a main source of information concerning foreign government practices related to the protection of the intellectual property rights of U.S.-owned companies. The commenter recommended that DOE use the reports to allow foreign-owned companies to know whether or not they are likely to be eligible to participate in such programs prior to submitting an application. Two commenters recommended that DOE work with other federal agencies to ensure that DOE's policy is implemented in a manner that is predictable and consistent with U.S. Government trade policies, including intellectual property rights protection. Section 600.505 allows DOE to consider any information related to the protection of intellectual property rights of U.S.-owned companies and to seek and consider advice from other federal agencies concerning such information, as appropriate. To promote consistency, DOE has considered information on intellectual property rights protection developed by other federal agencies and has consulted with appropriate federal agencies in applying the section 2306(2)(B) standards. DOE intends to continue this practice.

H. Administrative Issues

DOE received several comments concerning the ''burden'' of requirements established in the proposed rulemaking imposed on applicants. One commenter expressed the view that DOE should avoid the imposition of requirements which divert scarce research and development resources to purposes of administration. This commenter also took issue with the proposed certification procedures including those set forth at § 600.504(d) calling for a certification of status as a ''United States-owned company.'' The commenter viewed these requirements as overly legalistic and creating an unnecessary administrative burden and expense. The Department agrees that the administrative burden on applicants in complying with the requirements of section 2306 should be minimized wherever possible. The Department has modified § 600.504 (b) and (c) to provide for representations as opposed to certifications concerning ownership status and other factors. This approach will allow the applicant to demonstrate eligibility while minimizing any administrative burden or added expense.

Another commenter, also urging that the administrative burden of complying with section 2306 should be minimized, argued that there is no reason to impose section 2306 requirements on firms meeting the definition of ''small business'' under the regulations of the Small Business Administration (SBA) because such firms, to be approved as a small business by SBA, must already meet most of the requirements of section 2306. The Department does not agree that qualifying for small business status is equivalent to satisfying the eligibility criteria of section 2306. *Compare* 13 CFR § 121.403 with 42 U.S.C. 13525. However, DOE sought comment on how it should make the required section 2306 determination in the context of relatively small financial assistance awards. DOE suggested that one possible alternative would be to ask applicants for awards below $100,000 to certify that they satisfy all the eligibility requirements of section 2306 (1) and (2)(A). The Department, in implementing this policy statement, expects to establish such self-certification procedures to minimize the compli-ance burden for awards of less than $100,000. Guidance on the procedures for establishing eligibility is available from the DOE Office of Procurement and Assistance Management (202–586–8613).

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs. Today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review as provided in the Supplementary Information section of this rule.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Pursuant to appendix A of subpart D of 10 CFR part 1021, the Department has determined that today's regulatory action is categorically exempt as a procedural rule for implementation of statutory requirements.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's action interprets the section 2306 eligibility requirements to be inapplicable to State applications for financial assistance. Therefore, the Department has determined that they will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal

standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certifies that today's regulatory action meets the requirements of section 2 (a) and (b)(2) of Executive Order 12778.

Issued in Washington, DC, on this 13th day of December 1995.

Dan W. Reicher,

Acting Assistant Secretary for Policy.

For the reasons stated in the preamble, part 600 of title 10, Subchapter H of the Code of Federal Regulations is amended as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 is revised to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

2. New subpart F, consisting of §§ 600.500 through 600.505, is added to read as follows:

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

Sec.
600.500 Purpose and scope.
600.501 Definitions.
600.502 What must DOE determine.
600.503 Determining the economic interest of the United States.
600.504 Information an applicant must submit.
600.505 Other information DOE may consider.

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

§ 600.500 Purpose and scope.

This subpart implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

§ 600.501 Definitions.

The definitions in § 600.3 of this part, including the definition of the term ''financial assistance,'' are applicable to this subpart. In addition, as used in this subpart:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501 (c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

§ 600.502 What must DOE determine.

A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(a) Consistent with § 600.503, the company's participation in a covered program would be in the economic interest of the United States; and

(b) The company is either—

(1) A United States-owned company; or

(2) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(i) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(ii) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(iii) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

§ 600.503 Determining the economic interest of the United States.

In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under § 600.502(a), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(a) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(b) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(c) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(1) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(2) To procure parts and materials from competitive suppliers.

§ 600.504 Information an applicant must submit.

(a) Any applicant for financial assistance under a covered program shall submit with the application for financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 600.502(a) and findings concerning ownership status under § 600.502(b).

(b) If an applicant for financial assistance is submitting evidence relating to future undertakings, such as an agreement under § 600.503(c) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(c) If an applicant for financial assistance is claiming to be a United States-owned company, the applicant

must submit a representation affirming that it falls within the definition of that term provided in § 600.501.

(d) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 600.502.

§ 600.505 Other information DOE may consider.

In making the determination under § 600.502(b)(2), DOE may—

(a) consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(b) consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(1) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(2) Local investment opportunities afforded to United States-owned companies; and

(3) Protection of intellectual property rights of United States-owned companies;

(c) seek and consider advice from other federal agencies, as appropriate; and

(d) consider any publicly available information in addition to the information provided by the applicant.

[FR Doc. 95–30752 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

[Notice 1995–24]

11 CFR Part 110

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On Oct. 5, 1995 (60 FR 52069), the Commission published the text of revised regulations governing disclaimers on campaign communications. On Nov. 29, 1995, the Commission published a correction to the preamble of the revised regulations. (60 FR 61199) 11 CFR Part 110. These regulations implement a provision of the Federal Election Campaign Act of 1971, as amended. The Commission announces that these rules are effective as of December 20, 1995.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Part 110 were transmitted to Congress on Oct. 2, 1995. Thirty legislative days expired in the Senate on Nov. 28, 1995, and in the House of Representatives on Dec. 5, 1995.

The Commission subsequently published a corrections notice to the preamble of these rules. The Speaker of the House of Representatives and the President of the Senate were notified of the correction notice on Nov. 27, 1995. The correction did not affect the text of the rules.

The rules address the circumstances under which a disclaimer must be included on campaign communications, as well as what information must be included in the disclaimer. The correction notice deleted a potentially misleading reference to phone bank activity that had inadvertently been included in the Explanation and Justification to the revised rules.

Announcement of Effective Date: 11 CFR 110.11, as published at 60 FR 52069, is effective as of December 20, 1995.

Dated: December 15, 1995.

Lee Ann Elliot,

Vice Chairman, Federal Election Commission.

[FR Doc. 95–30940 Filed 12–19–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 95–74]

Repeal of the Charitable Contribution Limitation Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) has determined that the making of charitable donations is within the corporate power of the Federal Home Loan Banks (FHLBanks) and that issues of safety and soundness to which excessive donations might give rise can be adequately addressed through the Finance Board's FHLBank examination process. Therefore, the Finance Board is repealing the regulation that requires that FHLBanks obtain the approval of the Board of Directors of the Finance Board before making charitable donations in excess of $5,000 to one organization, or $25,000 total, during one calendar year. The repeal of this regulation is intended to allow the FHLBanks to use their own discretion in making such donations, subject only to the Finance Board's power to enforce standards of safety and soundness in FHLBank operations. This result is in keeping with the Finance Board's continuing effort to devolve corporate governance authority to the FHLBanks.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen E. Hancock, Assistant Director, Office of Policy and Financial Reporting, (202) 408–2906, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 934.11 of the Finance Board's regulations requires prior approval of the Board of Directors of the Finance Board, or its designee, for charitable contributions by a FHLBank that exceed $5,000 to one organization, or $25,000 in total during a calendar year. 12 CFR 934.11. As a result of an ongoing internal review of its regulations, the Finance Board, for the reasons set forth below, has determined that this regulation is unnecessary. Accordingly, the Finance Board is repealing section 934.11.

The substance of section 934.11 originally appeared at section 524.11 of the regulations of the Finance Board's predecessor, the Federal Home Loan Bank Board (FHLBB). In 1959, the FHLBB promulgated a regulation prohibiting the FHLBanks from making charitable donations. See 12 CFR 524.11 (1959) (amended). The FHLBB had determined that a FHLBank did not have the legal authority to make charitable donations and, further, wanted to prevent FHLBanks from favoring some communities in their districts over others.

In 1975, the FHLBB reconsidered its position and concluded that charitable donations, within reasonable limits, would further the corporate interests of the FHLBanks. See 40 FR 46302 (Oct. 7, 1975). Therefore, the FHLBB amended

section 524.11 to permit a FHLBank, with the approval of its board of directors, to make charitable donations not exceeding $1,000 to one organization, or $5,000 in total in a calendar year. See 12 CFR 524.11 (1976) (amended). Exceptions to these annual limits required prior approval of the FHLBB's Office of District Banks. Id.

Recognizing the effects of inflation on the dollar limits it had set in 1975, the FHLBB in 1987 raised the annual limit on individual donations to $5,000 and on aggregate donations to $25,000. See 52 FR 49381 (Dec. 31, 1987).

With the dissolution of the FHLBB and the establishment of the Finance Board in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, § 401, 103 Stat. 183 (Aug. 9, 1989) (codified at 12 U.S.C. 1437 note), section 524.11 was redesignated as section 934.11 of the Finance Board's regulations. See 54 FR 36759 (Sept. 5, 1989). In 1990, the Finance Board amended section 934.11 to require prior approval of the Board of Directors of the Finance Board, or its designee, for exceptions to the annual dollar limitations on FHLBank charitable donations. See 55 FR 2229 (Jan. 23, 1990). Since that time, the Finance Board has routinely approved requests from the FHLBanks for exceptions to the annual charitable donations limitation.

II.Analysis of the Proposed Rule

The Finance Board has determined that the general corporate powers granted to the FHLBanks pursuant to section 12(a) of the Federal Home Loan Bank Act (Bank Act), see 12 U.S.C. 1432(a), include the power to make charitable donations. Section 12(a) provides that each FHLBank ''shall have all such incidental powers, not inconsistent with the provisions of this chapter, as are customary and usual in corporations generally.'' Id. Under the statutes and common law of most states, corporations generally enjoy the power to make donations for charitable, scientific, or educational purposes. See 18B Am. Jur. 2d *Corporations* Section 2902 (1985). Corporations may support charities important to the welfare of the communities in which they do business. Id. Thus, the FHLBanks have statutory authority to make donations to charities in the communities they serve as a ''customary and usual'' corporate power. See id.; 12 U.S.C. 1432(a). There is no statutory provision that otherwise would require Finance Board approval of such donations.

Because the FHLBanks have authority under the Bank Act to make charitable donations and because the Bank Act and the regulations do not otherwise address the issue, repeal of section 934.11 of the Finance Board's regulations would not prevent the FHLBanks from making such donations. In addition, the repeal of section 934.11 would not affect Finance Board oversight of FHLBank charitable donations. The FHLBank's statutory authority to make charitable donations still would be subject to standards of reasonableness and financial safety and soundness enforced by the Finance Board, as well as any other limitations the Finance Board may decide to impose. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1432(a).

The Finance Board and the FHLBanks have been considering ways to transfer a variety of governance responsibilities from the Finance Board to the FHLBanks since the completion of studies required by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 106 Stat. 3672 (Oct. 28, 1992), which concluded that the FHLBanks should be allowed broad discretion to manage their corporate affairs as long as they comply with the Bank Act and Finance Board regulations. Finance Board and FHLBank staff have identified approval of all charitable donations as one of the governance responsibilities that should be devolved from the Finance Board to the FHLBanks. Repeal of section 934.11 would effect the devolution of this authority.

Repeal of section 934.11 of the Finance Board's regulations also will be consistent with the goal of the Vice President's National Performance Review to reduce the total number of regulations of executive agencies. See Report of the National Performance Review 32–33 (Sept. 17, 1993); E.O. 12,861, 58 FR 48255 (Sept. 14, 1993).

For the foregoing reasons, the Finance Board has determined that section 934.11 of its regulations is no longer necessary. Accordingly, the Finance Board has decided to repeal section 934.11 of its regulations, pursuant to its general rulemaking authority under section 2B(a)(1) of the Bank Act. See 12 U.S.C. 1422b(a)(1).

III. Administrative Procedure Act

Because this final rule merely repeals a provision of the Finance Board's regulations that is burdensome to the FHLBanks and will have no adverse affect on the public, the Finance Board, for good cause, finds that the notice and public comment procedure is unnecessary in this instance. Therefore, for good cause shown under 5 U.S.C. 553(b)(B), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act, as well as from the 30-day delay in the effective date under 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

Because this final rule repeals a restrictive provision of the Board's regulations, it will not impose any regulatory requirements on small entities. Therefore, in accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Id. section 605(b).

List of Subjects in 12 CFR Part 934

Federal home loan banks, securities, surety bonds.

Accordingly, the Federal Housing Finance Board hereby amends Chapter IX, Title 12, Code of Federal Regulations, as set forth below.

PART 934–OPERATIONS OF THE BANKS

1.The authority citation for Part 934 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1442.

§ 934.11 [Removed]

2.Section 934.11 is removed.

§§ 934.12 through 934.15 [Redesignated as §§ 934.11 through 934.14]

3.Sections 934.12 through 934.15 are redesignated as §§ 934.11 through 934.14, respectively.

Dated: December 8, 1995.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–30517 Filed 12–19–95; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–28–AD; Amendment 39–9467; AD 95–26–09]

Airworthiness Directives; Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

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

applicable to Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters. This action requires initial and repetitive magnetic particle inspections of the main rotor shaft (shaft) for cracks, and defines power limitations for certain helicopter operations. This amendment is prompted by a recent accident in which a shaft failed, resulting in loss of power. Subsequent inspections on other aircraft of the same type revealed cracks in four additional shafts. The actions specified in this AD are intended to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Walsh, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters with shaft assembly, part number (P/N) S1635–20059–2, installed. This AD is prompted by an accident in which the failure of a shaft resulted in the crash of a helicopter. Since that accident, inspections have revealed cracks in four additional shafts. The shaft transmits power to the main rotor system to provide lift for the helicopter. Failure of this shaft results in loss of power to the main rotor system and subsequent loss of control of the helicopter. Due to the criticality of the shaft, this AD must be issued immediately to correct an unsafe condition in the affected helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters of the same type design, this AD is being issued to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter. This AD requires determining the operational cycles-per-hour on the helicopter, removing the shaft assembly from the main gear box, and inspecting the shaft for cracks using a magnetic particle inspection method within the next 50 hours time-in-service (TIS). Following this initial inspection, repetitive magnetic particle inspections are required. Additionally, this AD prescribes operating limitations for certain helicopter operations.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–28–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

AD 95–26–09 Federico Helicopters; Invest in Opportunities, Inc.; Orlando Helicopter Airways; Consolidated Air Crane, Inc.; and Pacific Aviation, Inc.: Amendment 39–9467. Docket No. 95–SW–28–AD

Applicability: Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters with main rotor shaft assembly (shaft assembly), part number (P/N) S1635–20059–2, installed, certificated in any category.

Note 1: The shaft assembly consists of a main rotor shaft, P/N S1635–20059; an upper end plug, P/N S1635–20153; and a lower end plug, P/N S1635–20154. The shaft assembly P/N (S1635–20059–2) is marked on the edge of the main rotor shaft lower flange.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main rotor shaft (shaft), loss of power to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, determine the maximum number of actual operational cycles-per-hour of the current shaft assembly since installation. An operational cycle is defined as one turnaround (external lift cycle) for external load operations, and as one takeoff and one landing for internal load operations. A turnaround is defined as picking up an external load, transporting that load to a drop-off point, releasing the load, and flying to the next load pickup point. If the maximum number of actual operational cycles-per-hour cannot be determined, use 25-operational cycles-per-hour as the maximum operational cycles-per-hour for purposes of this AD. Record the determined number of operational usage cycles-per-hour of the shaft assembly in the appropriate aircraft maintenance records.

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, inspect in accordance with paragraph (b) of this AD within the next 50 hours time-in-service (TIS), unless previously accomplished within the last 200 hours TIS.

(2) If the maximum operational cycles-per-hour has never exceeded 19 cycles-per-hour, inspect the shaft in accordance with paragraph (b) of this AD within the next 50 hours TIS, unless previously accomplished.

(b) Remove the shaft assembly, P/N S1635–20059–2, from the main gear box. Remove the upper end plug, P/N S1635–20153, and lower end plug, P/N S1635–20154, from the shaft assembly, and conduct a magnetic particle inspection (MPI) of the shaft for cracks in accordance with MIL–STD–1949 or ASTM E–1444. Pay particular attention to the inside diameter of the 0.7515 - 0.7510-inch diameter dowel pin holes in the flange and adjacent flange surfaces.

Note 3: Section 2D of Sikorsky Aircraft Alert Service Bulletin 58B35–34, dated June 9, 1995, contains a procedure for conducting a MPI of the shaft (in agreement with MIL-STD–1949 or ASTM E–1444).

(c) Conduct repetitive MPI's of the shaft for cracks as follows:

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, repeat the MPI at intervals not to exceed 250 hours TIS from the date of the last inspection.

(2) If the maximum operational cycles-per-hour exceeds 6 cycles-per-hour, but has always been less than 20 cycles-per-hour, repeat the MPI at 1,250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS from the date of the last inspection. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, begin the repetitive inspections within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(3) If the maximum operational cycles-per-hour has never exceeded 6 cycles-per-hour, repeat the MPI at 1,250 hours TIS. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, repeat the MPI within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(d) Report all inspection results to the Manager, Boston Aircraft Certification Office, using the Attachment provided later in this AD. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) If no crack is discovered, replace the upper and lower end plugs into the shaft and reinstall the shaft assembly into the main gearbox.

(f) If any crack is discovered or on or before the shaft assembly reaches 2,500 hours TIS, replace the shaft assembly with an airworthy shaft assembly, P/N S1635–20059–2. If the replacement shaft has previously been in service, determine the maximum operational cycles-per-hour in accordance with paragraph (a) and inspect in accordance with this AD.

Note 4: In accordance with the applicable maintenance manual, 2,500 hours TIS is the mandatory retirement life for the shaft assembly, P/N S1635–20059–2.

(g) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, insert the following restrictions into the Limitations section of the Rotorcraft Flight Manual:

(1) For turbine engine installations: ''The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 93%N_f. Takeoff power operations are prohibited.''

(2) For reciprocating engine installations: ''The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 2,500 RPM. Takeoff power operations are prohibited.''

(h) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, install on the instrument panel, adjacent to the pilot's engine (N_f or RPM) tachometer, torquemeter, or manifold pressure gauges, a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering of 0.2 inch minimum height and stated in one or two lines:

(1) For turbine engine installations: ''MAX PWR: 101% Q AT 93% N_f''

(2) For reciprocating engine installations: ''MAX PWR: 47.5 IN. HG AT 2,500 RPM''

(i) Continue to record operational cycles-per-hour of the shaft assembly in the appropriate maintenance records. If operational cycles-per-hour increases on an affected shaft assembly to the extent that it places the shaft assembly into a higher cycles-per-hour usage group, the applicable requirements and limitations contained in this AD for the higher usage group apply to that shaft assembly. A replacement shaft assembly must comply with all requirements and limitations of this AD as applicable. If the number of operational cycles-per-hour determined for a replacement shaft assembly does not equal or exceed 20 cycles-per-hour, the Rotorcraft Flight Manual limitation specified in paragraph (g) and the placard required by paragraph (h) may be removed.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

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

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

(l) This amendment becomes effective on January 4, 1996.

Attachment

Inspection Results Report

The following information must be reported as soon as possible, but no later than 7 days after inspection, to: Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, FAX: (617) 238–7199.

Operator/Repair Station _____
Aircraft Model No. _____
Aircraft Serial No. _____
Date of Inspection _____
Main Rotor Part No. _____
Main Rotor Serial No. _____

Type of Aircraft Utilization:
Passenger Carry _____
Firefighting _____
Utility/Construction _____
Logging _____
Other _____

Identify Operational Usage Cycles-Per-Hour:
1–6 Operational
Cycles-Per-Hour _____
7–19 Operational
Cycles-Per-Hour _____
20–Above Operational
Cycles-Per-Hour _____

Next Inspection Date (Estimated): _____
and Flight Hours (Estimated): _____

Magnetic Particle Inspection (MPI) Results (this inspection): Passed _____
Failed _____

If a crack is found, indicate the approximate location on the part and the length of the crack in inches: _____

Total Time-In-Service (TIS) (Hours):
Estimated _____
Actual _____
Unknown _____
At Retirement _____

Inspection results at retirement (if known):
MPI Passed _____ Failed _____
Visual Passed _____Failed _____

Log Book Entry for Part No. _____, Serial No. _____, is (date) _____, at Retirement Hours _____. This part's Serial No. has been marked unairworthy and unfit for further service on (date) _____, 199 ____.

Issued in Fort Worth, Texas, on December 13, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–30771 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–SW–21–AD; Amendment 39–9466; AD 95–26–08]

Airworthiness Directives; Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters. This action requires initial and repetitive magnetic particle inspections of the main rotor shaft (shaft) for cracks, and defines power limitations for certain helicopter operations. This amendment is prompted by a recent accident in which a shaft failed, resulting in loss of power. Subsequent inspections on other aircraft of the same type revealed cracks in four additional shafts. The actions specified in this AD are intended to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Walsh, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters with shaft assembly, part number (P/N) S1635–20059–2, installed. This AD is prompted by an accident in which the failure of a shaft resulted in the crash of a helicopter. Since that accident, inspections have revealed cracks in four additional shafts. The shaft transmits power to the main rotor system to provide lift for the helicopter. Failure of this shaft results in loss of power to the main rotor system and subsequent loss of control of the helicopter. Due to the criticality of the shaft, this AD must be issued immediately to correct an unsafe condition in the affected helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters of the same type design, this AD is being issued to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter. This AD requires determining the operational cycles-per-hour on the helicopters, removing the shaft assembly from the main gear box, and inspecting the shaft for cracks using a magnetic particle inspection method within the next 50 hours time-in-service (TIS). Following this initial inspection, repetitive magnetic particle inspections are required. Additionally, this AD prescribes operating limitations for certain helicopter operations.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–21–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant

regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

AD 95–26–08 Sikorsky Aircraft: Amendment 39–9466. Docket No. 95–SW–21–AD.

Applicability: Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters with main rotor shaft assembly (shaft assembly), part number (P/N) S1635–20059–2, installed, certificated in any category.

Note 1: The shaft assembly consists of a main rotor shaft, P/N S1635–20059; an upper end plug, P/N S1635–20153; and a lower end plug, P/N S1635–20154. The shaft assembly P/N (S1635–20059–2) is marked on the edge of the main rotor shaft lower flange.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main rotor shaft (shaft) loss of power to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, determine the maximum number of actual operational cycles-per-hour of the current shaft assembly since installation. An operational cycle is defined as one turnaround (external lift cycle) for external load operations, and as one takeoff and one landing for internal load operations. A turnaround is defined as picking up an external load, transporting that load to a drop-off point, releasing the load, and flying to the next load pickup point. If the maximum number of actual operational cycles-per-hour cannot be determined, use 25-operational cycles-per-hour as the maximum operational cycles-per-hour for purposes of this AD. Record the determined number of operational usage cycles-per-hour of the shaft assembly in the appropriate aircraft maintenance records.

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, inspect in accordance with paragraph (b) of this AD within the next 50 hours time-in-service (TIS), unless previously accomplished within the last 200 hours TIS.

(2) If the maximum operational cycles-per-hour has never exceeded 19 cycles-per-hour, inspect the shaft in accordance with paragraph (b) of this AD within the next 50 hours TIS, unless previously accomplished.

(b) Remove the shaft assembly, P/N S1635–20059–2, from the main gear box. Remove the upper end plug, P/N S1635–20153 and lower end plug, P/N S1635–20154, from the shaft assembly, and conduct a magnetic particle inspection (MPI) of the shaft for cracks in accordance with MIL–STD–1949 or ASTM E–1444. Pay particular attention to the inside diameter of the 0.7515–0.7510-inch diameter dowel pin holes in the flange and adjacent flange surfaces.

Note 3: Section 2D of Sikorsky Aircraft Alert Service Bulletin 58B35–34, dated June 9, 1995, contains a procedure for conducting a MPI of the shaft (in agreement with MIL–STD–1949 or ASTM E–1444).

(c) Conduct repetitive MPI's of the shaft for cracks as follows:

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, repeat the MPI at intervals not to exceed 250 hours TIS from the date of the last inspection.

(2) If the maximum operational cycles-per-hour exceeds 6 cycles-per-hour, but has always been less than 20 cycles-per-hour, repeat the MPI at 1,250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS from the date of the last inspection. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, begin the repetitive inspections within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(3) If the maximum operational cycles-per-hour has never exceeded 6 cycles-per-hour, repeat the MPI at 1,250 hours TIS. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, repeat the MPI within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(d) Report all inspection results to the Manager, Boston Aircraft Certification Office, using the Attachment provided later in this AD. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) If no crack is discovered, replace the upper and lower end plugs and reinstall the shaft assembly into the main gearbox.

(f) If any crack is discovered or on or before the shaft assembly reaches 2,500 hours TIS, replace the shaft assembly with an airworthy shaft assembly, P/N S1635–20059–2. If the replacement shaft has previously been in service, determine the maximum operational cycles-per-hour in accordance with paragraph (a) and inspect in accordance with this AD.

Note 4: In accordance with the applicable maintenance manual, 2,500 hours TIS is the mandatory retirement life for the shaft assembly, P/N S1635–20059–2.

(g) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, insert the following restrictions into the Limitations section of the Rotorcraft Flight Manual:

(1) For turbine engine installations: ''The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 93%N_f. Takeoff power operations are prohibited.''

(2) For reciprocating engine installations: ''The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 2,500 RPM. Takeoff power operations are prohibited.''

(h) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, install on the instrument panel, adjacent to the pilot's engine (N_f or RPM) tachometer, torquemeter, or manifold pressure gauges, a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering of 0.2 inch minimum height and stated in one or two lines:

(1) For turbine engine installations: ''MAX PWR: 101% Q AT 93% N_f''

(2) For reciprocating engine installations: ''MAX PWR: 47.5 IN. HG at 2,500 RPM''

(i) Continue to record operational cycles-per-hour of the shaft assembly in the appropriate maintenance records. If operational cycles-per-hour increases on an affected shaft assembly to the extent that it places the shaft assembly into a higher cycles-per-hour usage group, the applicable requirements and limitations contained in this AD for the higher usage group apply to that shaft assembly. A replacement shaft assembly must comply with all requirements

and limitations of this AD as applicable. If the number of operational cycles-per-hour determined for a replacement shaft assembly does not equal or exceed 20 cycles-per-hour, the Rotorcraft Flight Manual limitation specified in paragraph (g) and the placard specified in paragraph (h) may be removed.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

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

(l) This amendment becomes effective on January 4, 1996.

Attachment—Inspection Results Report

The following information must be reported as soon as possible, but no later than 7 days after inspection, to: Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, FAX: (617) 238–7199.

Operator/Repair Station _____
Aircraft Model No. _____
Aircraft Serial No. _____
Date of Inspection _____
Main Rotor Part No. _____
Main Rotor Serial No. _____
Type of Aircraft Utilization:
Passenger Carry _____
Utility/Construction _____
Firefighting _____
Logging _____
Other _____
Identify Operational Usage Cycles-Per-Hour:
1–6 Operational Cycles-Per-Hour _____
7–19 Operational Cycles-Per-Hour _____
20–Above Operational Cycles-Per-Hour _____
Next Inspection Date (Estimated): _____
and Flight Hours (Estimated): _____
Magnetic Particle Inspection (MPI) Results (this inspection):
Passed _____ Failed _____
If a crack is found, indicate the approximate location on the part and the length of the crack in inches: _____
Total Time-In-Service (TIS) (Hours):
Estimated _____
Actual _____
Unknown _____
At Retirement _____
Inspection results at retirement (if known):
MPI Passed _____
Failed _____
Visual Passed _____
Failed _____
Log Book Entry for Part No. _____, Serial No. _____, is (date) _____, at Retirement Hours _____. This part's Serial No. has been marked unairworthy and unfit for further service on (date) _____, 199 ____.

Issued in Fort Worth, Texas, on December 13, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–30772 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–238–AD; Amendment 39–9465; AD 95–26–07]

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This action requires revising the Limitations Section of the Airplane Flight Manual to provide the flight crew with procedures to check the travel range of the aileron. This action also requires inspection for damage of the shear pins of the aileron flutter damper and aileron hinge fittings, and various follow-on actions. This amendment is prompted by reports of failure of shear pins in the aileron flutter damper. The actions specified in this AD are intended to prevent damage to the aileron hinge fittings due to failed shear pins, which subsequently could cause reduced controllability of the airplane.

DATES: Effective January 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation advises that it has received reports indicating that the shear pins of the aileron flutter damper had failed. Investigation revealed that the shear pins had sheared off and migrated out, which subsequently damaged the aileron hinge fittings. This condition, if not corrected, could result in reduced controllability of the airplane.

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision ''A,'' dated September 8, 1995, which describes procedures for:

1. A visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting;

2. Repair of the aileron attachment fitting, if necessary;

3. For airplanes on which any damaged shear pin is found, removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware;

4. For certain airplanes on which no damaged shear pin is found, repetitive visual inspections to detect damage of the shear link, the shear pin, and the aileron attachment fitting until the aileron flutter dampers are removed.

Transport Canada Aviation classified the alert service bulletin as mandatory, and issued Canadian airworthiness directive CF–95–14, dated September 11, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada 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, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent damage to the aileron hinge fittings due to the failure of the shear pins, which could cause subsequent reduced controllability of the airplane. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual to provide the flight crew with procedures to check the travel range of the aileron prior to the first flight of the day. Such checks are necessary to verify proper operation of the aileron control system. The FAA has determined that these checks may be properly performed by pilots because the checks do not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of reference to technical data that are not contained in the body of the AD.

This AD also requires a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting; and repair of the aileron attachment fitting, if necessary. This AD also requires removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware for airplanes on which any damage to the shear pin is detected. For certain airplanes on which no damaged shear pin is found, this AD provides for accomplishment of the visual inspections on a repetitive basis until the aileron flutter dampers are removed. These actions are required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that, although the relevant Transport Canada Aviation airworthiness directive requires the visual inspection of all aileron flutter damper shear pins and aileron hinge fittings within 7 calendar days or at the next scheduled shear pin replacement, this AD requires that inspection to be performed within 30 days. The FAA has determined that an interval of 30 days will address the identified unsafe condition in a timely manner. In recent communications with Transport Canada Aviation and the manufacturer, the FAA finds that the unsafe condition was not as urgent as it initially appeared to be. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the average utilization of the affected fleet and the time necessary to perform the required actions (10 work hours). In light of all these factors, the FAA finds 30 days to be an appropriate compliance time for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

This is considered to be interim action. Once a terminating modification is developed, approved, and available, the FAA may consider additional rulemaking.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–238–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–26–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–9465. Docket 95–NM–238–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7079 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aileron hinge fittings due to failure of the shear pins, which could cause subsequent reduced controllability of the airplane; accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Before engine start, prior to the first flight of each day, the flight crew or certificated maintenance personnel shall perform a check of the travel range of the aileron as follows:

Aileron—Check travel range (to approx ½ travel) using each hydraulic system in turn, with the other hydraulic systems depressurized.''

Note 2: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45, dated September 7, 1995, in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45.

Note 3: Operators should note that operation of the aircraft remains restricted to the altitude and airspeed limits currently specified in the FAA-approved AFM, Revision 34, Chapter 5, Abnormal Procedures, Section 13, Hydraulic Power, Paragraphs ''A'' through ''C'' and ''M'' through ''O.''

(b) Perform a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995, and at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 7003 through 7054 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 30 days after the effective date of the AD.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 400 flight hours after the effective date of the AD.

(c) If no shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as applicable, at the times specified:

(1) For airplanes having serial numbers 7003 through 7054 inclusive: At the next scheduled shear pin replacement, but no later than 400 flight hours after accomplishing the inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 400 flight hours. At the next scheduled shear pin replacement, but no later than 1,500 landings after accomplishing the initial inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(d) If any shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(e) If any aileron hinge fitting is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(h) The inspections, removal, and repair shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 4, 1996.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30961 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–245–AD; Amendment 39–9464; AD 95–26–06]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This AD requires either that the control circuit breaker of the left fuel pump valve be opened and collared, or that the Airplane Flight Manual (AFM) be revised to prohibit autoland operation

below 100 feet above ground level (AGL). Additionally, this action requires an inspection of the fuel system control panel (FSCP) to detect any mis-wiring, and modification or replacement of the FSCP. This AD also provides for an optional terminating modification for the requirements of the AD. This amendment is prompted by a report of improper wiring of the FSCP during production of these airplanes. The actions specified in this AD are intended to prevent degradation of the automatic landing system during flight due to improper wiring of the FSCP.

DATES: Effective January 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received a report from McDonnell Douglas indicating that improper wiring of the fuel system control panel (FSCP) on Model MD–11 airplanes was detected during functional checks performed during production. Investigation revealed that the direct current (DC) electrical busses, numbers 1 and 3, had been tied together; this could lead to a single short of one bus, which could adversely affect the operation of the remaining bus. This condition, if not corrected, could result in degradation of the automatic landing system during flight.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995, which describes procedures to open and collar the control circuit breaker, B1–458, of the left fuel dump valve. This will reduce the redundancy of the fuel dump system and the fuel dump rate so that autoland (dual land) operations can be maintained. This alert service bulletin also provides procedures for a conducting a one-time visual inspection of the FSCP to detect any mis-wiring, and various necessary follow-on actions, depending upon the result of the inspection. Necessary follow-on actions include re-identification, modification, or replacement of the FSCP, if necessary. (The McDonnell Douglas alert service bulletin references Honeywell Service Bulletin 4059024–28–2, dated November 22, 1995, as an additional source of service information for inspection, re-identification, and modification of the FSCP.)

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent degradation of the automatic landing system during flight due to improper wiring of the FSCP. This AD first requires either (1) That the control circuit breaker of the left fuel pump valve be opened and collared, in accordance with the McDonnell Douglas alert service bulletin described previously; or (2) that the FAA-approved Airplane Flight Manual (AFM) be revised to prohibit autoland operation below 100 feet above ground level (AGL).

Second, this AD also requires a one-time visual inspection of the FSCP to detect any mis-wiring, and re-identification, modification, or replacement of the FSCP, if necessary. These actions are required to be accomplished in accordance with the McDonnell Douglas alert service bulletin described previously. Additionally, operators must submit a report of the results of the inspection to the FAA.

This AD also provides for an optional terminating action for the requirements of the AD, which consists of replacing the FSCP with a modified unit.

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–245–AD.'' The postcard will be date stamped and returned to the commenter.

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–26–06 McDonnell Douglas: Amendment 39–9464. Docket 95–NM–245–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0593 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the automatic landing system during flight due to improper wiring of the fuel system control panel (FSCP), accomplish the following:

(a) Within 15 days after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), page 5–4, Flight Guidance, Automatic Landing Section, to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Autoland operation below 100 feet above ground level (AGL) is prohibited. The autopilot must be disconnected prior to descent below 100 feet AGL.''

(2) Open and collar the control circuit breaker, B1–458, of the left fuel dump valve, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995.

Note 2: McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995, references Honeywell Service Bulletin 4059024–28–2, dated November 22, 1995, for specific service instructions.

(b) Within 60 days after the effective date of this AD, perform a visual inspection to determine if the wiring is mis-wired in the fuel system control panel (FSCP), part number 4059024–901, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995.

(1) If the FSCP wiring is not mis-wired (the measured resistance between connector pins J1–T and J3–K is more than 100 ohms), accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Continue to operate the airplane provided that the actions specified in either paragraph (a)(1) or (a)(2) have been accomplished; or

(ii) Prior to further flight, re-identify the FSCP, part number 4059024–901, to incorporate modification letter ''A'' in the FSCP identification plate, in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995. This re-identification constitutes terminating action for the requirements of this AD. [The AFM revision as specified in paragraph (a)(1) of this AD, if previously accomplished, may be removed following this re-identification action.]

(2) If the FSCP wiring is mis-wired (the measured resistance between connectors J1–T and J3–K is less than 100 ohms), accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Continue to operate the airplane provided that the actions specified in either paragraph (a)(1) or (a)(2) have been accomplished; or

(ii) Prior to further flight, either modify the FSCP, part number 4059024–901; or replace the FSCP, part number 4059024–901, with an FSCP having part number 4059024–901 and modification letter ''A'' in the FSCP identification plate; in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995. This modification or replacement constitutes terminating action for the requirements of this AD. [The AFM revision as specified in paragraph (a)(1) of this AD, if accomplished previously, may be removed following this modification/replacement.]

(c) Within 10 days after accomplishing the visual inspection required by paragraph (b) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3690 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210, Attention: Ray Vakili, ANM–140L. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) Installation of an FSCP having part number 4059024–901 and modification letter ''A'' in the FSCP identification plate, in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995, constitutes terminating action for the requirements of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnel Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 4, 1996.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30962 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASO–23]

Removal of Class E Airspace; Marietta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class E airspace at Marietta, GA. The required weather observations are not available to Atlanta Tower, the ATC facility having jurisdiction over the Class E2 surface area airspace at the Cobb County-McCollum Field Airport, when the Cobb County-McCollum Field Airport Traffic Control Tower is closed. Therefore, the Class E2 surface area airspace for the airport must be revoked.

EFFECTIVE DATE: 9091 UTC, February 29, 1996.

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

SUPPLEMENTARY INFORMATION:

History

It is a requirement that weather observations shall be taken at the surface area's primary airport during the times and dates a surface area is designated, and further that the required weather observation shall be transmitted expeditiously to the ATC facility having jurisdiction over the surface area. When the Cobb County-McCollum Field Airport Traffic Control Tower is closed this requirement is not being met. This action will eliminate the impact Class E2 surface area airspace has placed on users of the airspace in the vicinity of the Cobb County-McCollum Field Airport. This rule will become effective on the date specified in the **DATES** section. Since this action removes the Class E2 surface area airspace, which eliminates the impact of Class E2 surface area airspace on users of the airspace in the vicinity of the Cobb County-McCollum Field Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E airspace at Marietta, GA. The required weather observations are not available to Atlanta Tower, the ATC facility having jurisdiction over the Class E2 surface area airspace at the Cobb County-McCollum Field Airport, when the Cobb County-McCollum Field Airport Traffic Control Tower is closed. Therefore, the Class E2 surface area airspace for the airport must be revoked.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Marietta, GA [Removed]

* * * * *

Issued in College Park, Georgia, on October 20, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–30919 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 779 and 799

[Docket No. 951211296–5296–01]

RIN 0694–AB30

Expansion of General License GLX and GTDR

AGENCY: Bureau of Export Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the Export Administration Regulations (EAR) by expanding General License GLX eligibility to include: microprocessors with a composite theoretical performance not exceeding 500 million theoretical operations per second; memory integrated circuits; certain digital integrated circuits; field programmable gate arrays and logic arrays; portable (personal) or mobile radiotelephones not capable of end-to-end encryption; and software to protect against computer viruses.

In addition, revisions have been made to expand eligibility for General License GTDR with written assurance to include virus protection software controlled under ECCN 5D13A.c.

This rule also revises the list of ''Additional Items Eligible for General License GLX'' included in a supplement to the General License section of the EAR to reflect the expansion of General License GLX, and makes editorial corrections to the permissive reexport provisions for technical data.

The expansion of General License GLX and GTDR to include additional items will reduce paperwork and licensing delays for exporters, and will focus controls on exports that are of direct strategic concern.

EFFECTIVE DATE: This rule is effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call Nancy Crowe, Bureau of Export Administration, Telephone: (202) 482–2440.

For questions of a technical nature on digital mobile telephones call Joseph Young, Bureau of Export Administration, Telephone: (202) 482–4197.

For questions of a technical nature on semiconductors call Robert Lerner, Bureau of Export Administration, Telephone: (202) 482–3710.

SUPPLEMENTARY INFORMATION:

Background

In response to the realities of a post-Cold War era, the Bureau of Export Administration published a final rule in the Federal Register on April 4, 1994, (59 FR 15621) that established General License GLX in section 771.20 of the Export Administration Regulations (EAR). General License GLX allows exports of many items, without the requirement of an individual validated license, to civil end-users and end-uses in formerly COCOM-proscribed destinations. This general license is available for items previously covered by Administrative Exception Notes in the Commerce Control List (CCL), with certain specified exceptions and additions noted in the EAR. General License GLX is not available for exports to military end-users or for known military end-uses. In addition to conventional military activities, military end-uses include any proliferation activities described in Part 778 of the EAR. Retransfers to military end-users or end-uses in countries eligible for General License GLX are strictly prohibited without prior authorization from the Department of Commerce.

Currently, most computer and telecommunications equipment listed on the CCL are eligible for General License GLX, except for most portable radiotelephones, virus protection software, and electronic devices and components. Since the formerly COCOM-proscribed destinations as well as the People's Republic of China are emerging markets for these items, and because this step is consistent with the national security and foreign policy objectives of the United States, this rule expands General License GLX for such items to ensure U.S. manufacturers remain competitive in these areas.

This rule expands General License GLX to include: microprocessors with a composite theoretical performance not exceeding 500 million theoretical operation per second identified under ECCN 3A01A.a.3.; memory integrated circuits identified under ECCN 3A01A.a.4.; digital-to-analog converters identified under ECCN 3A01.a.5.b.; field programmable gate arrays and logic arrays identified under ECCN 3A01A.a.7., and a.8.; digital integrated circuits identified under ECCN 3A01A.a.11.; portable (personal) or mobile radiotelephones not capable of end-to-end encryption identified under Export Control Classification Number (ECCN) 5A11A.a.; and software to protect against computer viruses identified under ECCN 5D13A.c.

This rule also removes ECCNs 4B01A, 4B02A, 4B03A and 4C01A from Supplement No. 1 to Part 771 of the EAR, Additional Items Eligible for General License GLX. This editorial revision conforms the GLX supplement with the removal of these ECCNs from the CCL on May 16, 1994 (59 FR 25314).

In addition, eligibility for General License GTDR with letter of assurance has been expanded to include virus protection software controlled under ECCN 5D13A.c. Note that such software is also eligible for General License GLX, and exporters may use either general license, whichever appropriate, provided that the export meets all the provisions of the general license.

This rule also makes editorial changes to the permissive reexport provisions for technical data based upon authorization by COCOM participating countries. Finally, this rule makes editorial changes to the permissive reexport provisions for the direct product of U.S.-origin technical to clarify the original intent. These clarifications do not provide substantive changes to the EAR.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, and notice of August 15, 1995 (60 FR 42767).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0694–0010, and 0694–0023.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

List of Subjects

15 CFR Parts 771, 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 771, 779, and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Parts 771 and 799 continue to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

2. The authority citation for 15 CFR Part 779 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

PART 771—[AMENDED]

3. Supplement No. 1 to Part 771, is revised to read as follows:

Supplement No. 1 to Part 771—Additional Items Eligible for General License GLX

Note: Portions of some items listed in this Supplement are controlled for missile technology (MT), nuclear proliferation (NP), or foreign policy (FP) reasons. Exporters are reminded that such portions are not eligible for General License GLX. Refer to the specific ECCNs to identify those portions of entries subject to MT, NP, or FP controls.

CATEGORY 1
- 1D01A
- 1D02A

CATEGORY 2
- 2A01A
- 2A02A
- 2A03A
- 2A04A
- 2A06A
- 2B03A.a

CATEGORY 3
- 3A01A.a.3. (up to 500 Mtops *only*)
- 3A01A.a.4.
- 3A01A.a.5 (except a.5.a.)
- 3A01A.a.7.
- 3A01A.a.8.
- 3A01A.a.11
- 3A02A.h.

CATEGORY 4
- 4A03A.d (having a 3–D vector rate less than 10M vectors/sec.)
- 4A03A.f

CATEGORY 5
- 5A02A (except .h and .i)
- 5A03A
- 5A04A
- 5A05A
- 5A06A
- 5A11A.a (portable or mobile radiotelephones for use with commercial civil cellular radiocommunications systems, not capable of end-to-end encryption)
- 5B01A
- 5B02A
- 5C01A
- 5D01A
- 5D02A
- 5D03A
- 5D13A.c

CATEGORY 6
- 6A01A.b
- 6A02A.a.4
- 6A03A.a.1
- 6A04A.f
- 6A05A.c.2.a
- 6A05A.d
- 6A05A.e
- 6B05A
- 6A08A.b
- 6A08A.c
- 6A08A.l.1.
- 6C02A.c
- 6C04A.h
- 6D03A.d

CATEGORY 8
- 8A02A.e.2

CATEGORY 9
- 9B01A.a
- 9B02A.b
- 9B01A.f
- 9B01A.h
- 9B05A
- 9B06A

PART 779—[AMENDED]

§ 779.8 [Amended]

5. Section 779.8 is amended:

a. By revising the word ''exported'' in paragraph (b)(2)(i) to read ''reexported'';

b. by revising the phrase ''export or reexport'' in paragraph (b)(2)(ii), (b)(2)(iii) and (b)(2)(iv) to read ''reexport''; and

c. by revising the phrase ''export or reexport'' in paragraph (b)(3) to read ''export from abroad''.

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

6. In Supplement No. 1 to Section 799.1, section II of Category 5 (Telecommunications and ''Information Security''), ECCN 5D13A is amended by revising the Requirements section to read as follows:

5D13A Specific ''Software'' as Follows

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GTDR: Yes, for 5D13.c and software described in Advisory Note 5 *only*. (See Note)

GTDU: No

Note: Exporter must have determined that the software is not controlled by the Office of Defense Trade Controls, Department of State, before using this general license.

* * * * *

Dated: December 14, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–30776 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DT–P

FEDERAL TRADE COMMISSION

16 CFR Part 400

Trade Regulation Rule Concerning Advertising and Labeling as to Size of Sleeping Bags

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Advertising and Labeling as to Size of Sleeping Bags. The Commission has reviewed the rulemaking record and determined that due to changes in industry practice, and the existence of laws in most states that mandate point-of-sale disclosures similar to those required by the Rule, the Rule no longer serves the public interest and should be repealed. This notice contains a State of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the State of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

State of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Advertising and Labeling as to Size of Sleeping Bags (Sleeping Bag Rule), 16 CFR Part 400, was promulgated in 1963 (28 FR 10900). The Sleeping Bag Rule regulates the advertising, labeling and marking of the dimensions of sleeping bags. The Commission had found that the practice of labeling sleeping bags by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of the sleeping bag. To correct this misconception, the Commission promulgated the Sleeping Bag Rule, which provides that it is an unfair method of competition and an unfair or deceptive act or practice to use the ''cut

size'' of the materials from which a sleeping bag is made to describe the size of a sleeping bag in advertising, labeling or marking unless:

(1) ''The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags''; and

(2) ''Such 'cut size' dimensions are accompanied by the words 'cut size' ''; and

(3) The reference to ''cut size'' is ''accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that such dimensions constitute the finished size''.[1]

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Sleeping Bag Rule (60 FR 27240). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Sleeping Bag Rule should be repealed or remain in effect (60 FR 48063).[2] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[3] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the Federal Register a request for public comments on its Sleeping Bag Rule (58 FR 21095). The Commission asked commenters to address the costs and benefits of the Rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws, and whether changes in technology affected the Rule.

Only one specific comment relating to the Sleeping Bag Rule was received, which generally supported a continuation of this regulation. In addition to this specific comment, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Sleeping Bag Rule because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the sleeping bag industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also conducted an informal inquiry and inspected sleeping bags at several national chain stores. This inquiry found no violations of the Rule on either the sleeping bag packaging materials or the labels affixed to the products themselves. In fact, it appeared from that limited inquiry that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violation of the Rule's requirements. Finally, the National Conference on Weights and Measures' Uniform Packaging and Labeling Regulation, which has been adopted by 47 States, regulates the labeling of sleeping bags, and provides that these items must be labeled with their finished size. Accordingly, due to changes in industry practice, and the existence of laws in most States that mandate point-of-sale disclosures similar to those required by the Rule, the Commission has determined to repeal the Sleeping Bag Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing Federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Sleeping Bag Rule imposes third-party disclosure requirements that constitute ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 400

Advertising, Sleeping bags, Trade practices.

PART 400—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the *Code of Federal Regulations* by removing part 400.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31010 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 402

Trade Regulation Rule Concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being

[1] The Rule then gives an example of proper size marking: ''Finished size 33″ × 68″; cut size 36″ × 72″.''

[2] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[3] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties, receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

Prismatic Binoculars. The Commission has reviewed the rulemaking record and determined that due to changes in technology, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purposes for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, Washington, DC 20580, telephone number (202) 326–2484.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars (Binocular Rule), 16 CFR Part 402, was promulgated in 1964 (29 FR 7316). The Rule requires a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic. Fully prismatic binoculars rely on a prism within the instrument to reverse the visual image entering the lens so that it appears right-side up to the user. Other binoculars rely partially or entirely on mirrors to reverse the visual image. When the rule was promulgated, the Commission was concerned that consumers could be misled into believing that non-prismatic binoculars were in fact prismatic, absent such a disclosure.

To prevent consumer deception, the rule proscribed the use of the term ''binocular'' to describe anything other than a fully prismatic instrument, unless the term was modified to indicate the true nature of the item. Under the Rule, non-prismatic instruments could be identified as binoculars only if they incorporated a descriptive term such as ''binocular-nonprismatic,'' ''binocular-mirror prismatic,'' or ''binocular-nonprismatic mirror,''

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Binocular Rule (60 FR 27241). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received one comment suggesting that there may be a continuing need for the Rule because field glasses and opera glasses, both of which are non-prismatic, are still advertised and sold today. The comment acknowledged, however, that present-day binoculars are fully prismatic, while the non-prismatic instruments are identified as either field glasses or opera glasses rather than binoculars.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Binocular Rule should be repealed or remain in effect (60 FR 48065).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

Since the Rule was promulgated, technological advances have reduced the cost of prisms to the point that almost all binoculars sold today are fully prismatic. Those that are not fully prismatic are marketed and sold as field glasses or opera glasses rather than binoculars. Thus, there does not appear to be any continuing need for the Rule. Repeal of the Rule will also further the objective of reducing obsolete government regulation.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Binocular Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 402

Binoculars, Trade practices.

PART 402—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 402.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31014 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

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16 CFR Part 404

Trade Regulation Rule Concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related

Products. The Commission has reviewed the rulemaking record and determined that due to changes in industry practices and state laws, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Esq., (202) 326–3022, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products (Tablecloth Rule), 16 CFR Part 404, was promulgated in 1964 (29 FR 11261). The Tablecloth Rule declares that in connection with the sale or offering for sale of tablecloths and related products, such as doilies, table mats, dresser scarves, place mats, table runners, napkins and tea sets, any representation of the cut size (that is, the dimensions of unfinished materials used in the construction of such products) constitutes an unfair method of competition and an unfair and deceptive act or practice unless.

(a) ''Such 'cut size' dimensions are accompanied by the words 'cut-size' ''; and

(b) ''The 'cut size' is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size.''

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Tablecloth Rule (60 FR 27242). In accordance with section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Tablecloth Rule should be repealed or remain in effect (60 FR 48067).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to sue expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. On April 19, 1993, the Commission published in the Federal Register a request for public comments on the Tablecloth Rule, 58 FR 21124. The Commission asked commenters to address the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained or amended.

The Commission received only one comment specifically addressing this Rule along with a general comment referring to several rules under review. The comment specific to this Rule was submitted by a trade group representing the textile rental, linen supply, uniform rental, dust control and commercial laundry services industries. In its one-page comment letter, the association stated there is a continuing need for this Rule. The commenter asserted that the Rule does not impose any additional costs or burdens on entities subject to the Rule and that the rule raises the level of professionalism in the industry.

In addition, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Tablecloth Rule because the general prohibitions covering false and deceptive advertising apply to the industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members or consumers.

Prior to the 1993 request for comments, Commission staff conducted an informal review of industry practices by examining the marking of dimensions on tablecloths and other items subject to the Rule available for retail sale at several national chain stores. This informal review revealed no instances of Rule violations. In fact, it appeared from the limited review that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violations of the Rule's requirements. Finally, the National Conference on Weight and Measures' Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of tablecloths, and provides that these items must be labeled with their finished size.

Because the practices that brought about the Tablecloth Rule are no longer common industry practices and are otherwise addressed by state law, the Rule is no longer necessary and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Tablecloth Rule imposes third-party disclosure requirements that

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included; publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

constitute ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 404

Advertising, Tablecloths and related products, Trade practices.

PART 404—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 404.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31012 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 413

Trade Regulation Rule Concerning the Failure to Disclose That Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning the Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics. The Commission has received the rulemaking record and determined that due to changes in technology, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez or Janice Podoll Frankle, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, (202) 326–3147 or (202) 326–3022.

SUPPLEMENTARY INFORMATION: .

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning the Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics (Fiberglass Curtain Rule), 16 CFR Part 413, was promulgated in 1967 (32 FR 11023). The Fiberglass Curtain Rule requires marketers of fiberglass curtains or draperies and fiberglass curtain or drapery cloth to disclose that skin irritation may result from handling fiberglass curtains or curtain cloth and from contact with clothing or other articles that have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from the container by cleaning.

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Fiberglass Curtain Rule (60 FR 27243). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, Untied States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Fiberglass Curtain Rule should be repealed or remain in effect (60 FR 48071).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Statement of Basis and Purpose for the Fiberglass Curtain Rule stated that consumers had experienced skin irritation after washing or handling glass fiber curtains and draperies and glass fiber curtain and drapery fabrics. Consequently,the Commission concluded that it was in the public interest to caution consumers that skin irritation could result from the direct handling of fiberglass curtains, draperies, and yard goods, and from body contact with clothing or other articles that had been washed with fiberglass products or in a container previously used to wash fiberglass products and not cleaned of all glass practicles.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule. Based on this review, the Commission has determined that fiberglass curtains and draperies and fiberglass curtain or drapery fabric no longer present a substantial threat of skin irritation to the consumer. Fiberglass was used in curtains primarily because of its fire retardant characteristic. Technological developments in fire retardant fabrics have caused fiberglass fabric to be displaced by polyester and modacrylics in the curtain and drapery industry.[3] Fiberglass fabrics are now used almost exclusively for very specialized industrial uses.[4] Because the products are no longer sold for consumer use, the Fiberglass Curtain Rule has become obsolete and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11 requires an analysis of the anticipated impact of the repeal of the Rule on businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the

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[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

[3] See Rulemaking Record, Category B, Staff Submissions.

[4] Id.

Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Fiberglass Curtain Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered by the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 413

Fiberglass curtains and curtain fabric, Trade practices.

PART 413—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 413.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31013 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 418

Trade Regulation Rule Concerning Deceptive Advertising and Labeling as to Length of Extension Ladders

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Length of Extension Ladders. The Commission has reviewed the rulemaking record and determined that due to changes in industry practice, and the existence of standards mandating the point-of-sale disclosures required by the Rule, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deceptive Advertising and labeling as to Length of Extension Ladders (Extension Ladder Rule), 16 CFR Part 418, was promulgated in 1969 (34 FR 929). The Extension Ladder Rule declares that it is an unfair or deceptive act or practice and an unfair method of competition to represent the size or length of an extension ladder in terms of the total length of the component sections thereof unless:

(a) Such size or length representation is accompanied by the words ''total length of sections'' or words with similar meaning that clearly indicate the basis of the representation; and,

(b) Such size or length representation is accompanied by a statement in close proximity that clearly and conspicuously shows the maximum length of the product when fully extended for use (i.e., excluding the footage lost in overlapping) along with an explanation of the basis for such representation.[1]

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Extension Ladder Rule (60 FR 27245). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Extension Ladder Rule should be repealed or remain in effect (60 FR 48075).[2] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, the use expedited procedures in this proceeding.[3]

The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the Federal Register a request for public comments on its Extension Ladder Rule (58 FR 21125). The Commission asked commenters to address questions relating to the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

Six specific comments were received. One commenter, a consumer, opined that the only label that should be on ladders is the ''maximum working length'' because consumers should not have to do any figuring to determine the length of the ladder that would meet their needs.

Of the other five commenters, four were manufacturers or suppliers of ladders and one was a trade association. A number of these comments referred to the American National Standards Institute (ANSI) standard A14, which governs the labeling of ladders. ANSI standard A14 details the requirements for labeling portable wood ladders, portable metals ladders, fixed ladders, job made ladders, and portable

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[1] The Rule then gives an example of proper length representation when the product consists of two ten foot sections: ''maximum working length 17', total length of sections 20'' or ''17′ extension ladder''.

[2] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[3] These procedures included: publishing a Notice of Proposed Rulemaking, soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

reinforced plastic ladders. The ANSI standard requires specification of the maximum working length of an extension ladder, as well as several other pieces of information not required by the Extension Ladder Rule, including the total length of the ladder's sections and the highest standing level of the ladder. Compliance with the ANSI standard, therefore, ensures compliance with the labeling requirements of the Extension Ladder Rule. Several commenters noted this overlap in coverage of the Extension Ladder Rule and ANSI standard A14, and recommended that the Rule be retained unchanged.

Another commenter stated that the Rule has imposed minor, incremental costs, but opined that the benefits have been significant in that consumers have a better understanding of extension ladder length. The commenter questioned whether there was a continuing need for this Rule given the existence of ANSI standard A14 and UL standard 184, which the commenter stated also requires extension ladders to be marked to indicate both the total length of sections and the maximum extended length or maximum working length.

In addition to these specific comments, one general comment, applicable to several Commission Rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Extension Ladder Rule because the general prohibitions of Section 5 of the Federal Trade Commission Act covering false and deceptive advertising apply to the ladder industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of length on extension ladders available for retail sale at several chain stores. That review indicated general compliance with the requirements of the Rule. Additionally, a check of Commission records failed to find any complaints regarding non-compliance with the Rule, or any initiation of law enforcement actions alleging violations of the Rule's requirements.

Accordingly, the Commission has reviewed the rulemaking record and determined to repeal the Extension Ladder Rule due to changes in industry practice, and the existence of industry standards mandating the point-of-sale disclosures required by the Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Extension Ladder Rule imposes third-party disclosure requirements that constitute ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 418

Advertisting, Extension ladders, Trade practices.

PART 418—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 418.

By direction of the Commission.

Donald S. Clark,

Secretary.

FR Doc. 95–31011 Filed 12–19–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8650]

RIN 1545–AS23

Disallowance of Deductions for Employee Remuneration in Excess of $1,000,000

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disallowance of deductions for employee remuneration in excess of $1,000,000. The regulations provide guidance to taxpayers that are subject to section 162(m), which was added to the Code by the Omnibus Budget Reconciliation Act of 1993.

DATES: These regulations are effective January 1, 1994.

For dates of applicability, see § 1.162–27(j).

FOR FURTHER INFORMATION CONTACT: Robert Misner or Charles T. Deliee at (202)622–6060 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1466. Responses to these collections of information are required to obtain a tax deduction for performance-based compensation in excess of $1 million.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent is 50 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 162(m) of the Internal Revenue Code, a publicly held corporation is denied a deduction for compensation paid to its ''covered employees'' to the extent the compensation exceeds $1,000,000 if the compensation would otherwise be deductible in a taxable year beginning on or after January 1, 1994.

On December 20, 1993, proposed regulations under section 162(m) (the 1993 proposed regulations) were published in the Federal Register (58

FR 66310). Amendments to the proposed regulations (the 1994 amendments) were published in the Federal Register on December 2, 1994 (59 FR 61844). Public hearings were held on May 9, 1994, and August 11, 1995. After consideration of the comments that were received in response to the notices of proposed rulemaking and at the hearings, the IRS and Treasury adopt the proposed regulations as amended and revised by this Treasury decision.

Explanation of Provisions

A. Overview of Provisions

As noted above, section 162(m) provides that a publicly held corporation is denied a deduction for compensation paid to a ''covered employee'' to the extent the compensation exceeds $1,000,000. A ''covered employee'' includes the chief executive officer (CEO), as well as any other individual whose compensation is required to be reported to the Securities and Exchange Commission by reason of that individual being among the four highest compensated officers for the taxable year (other than the CEO), as of the end of the corporation's taxable year.

''Performance-based compensation'' and certain other compensation is not subject to the deduction limitation of section 162(m). Performance-based compensation is remuneration payable solely on account of the attainment of one or more performance goals, but only if: (1) the goals are determined by a compensation committee of the board of directors consisting solely of two or more outside directors; (2) the material terms under which the compensation is to be paid are disclosed to the shareholders and approved by a majority in a separate vote before payment is made; and (3) before any payment is made, the compensation committee certifies that the performance goals and any other material terms have been satisfied.

Compensation is also excluded from the deduction limitation of section 162(m) if it is paid under a binding written contract that was in existence on February 17, 1993. In addition, in accordance with the legislative history, the proposed regulations exempt from the limitation compensation that is paid under an arrangement that existed before the corporation became publicly held, to the extent that the arrangement is disclosed in the initial public offering.

B. Discussion of Comments

Comments that relate to the application of the proposed regulations and the responses to the comments, including an explanation of the revisions reflected in the final regulations, are summarized below.

Dividend Equivalents Paid on Stock Options

Under the proposed regulations, the performance-based exception to the deduction limitation generally is applied on a grant-by-grant basis. If the facts and circumstances indicate, however, that the employee would receive all or part of the compensation regardless of whether the performance goal is attained, the compensation is not performance based. For example, where payment under a nonperformance based bonus is contingent upon the failure to attain the performance goals under an otherwise performance-based bonus, neither bonus arrangement will be considered performance based. The proposed regulations provide that whether dividends (which generally are not performance based) on restricted stock are payable before attainment of the performance goal, will not affect the determination of whether the restricted stock is performance based. The proposed regulations also provide, however, that if the amount of any compensation the employee will receive under a stock option is not based solely on an increase in the value of the stock after the date of grant (for example, an option granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant will be performance based.

Commentators raised the question of whether nonperformance-based dividend equivalents that are paid with respect to a granted but unexercised stock option irrespective of whether the option is exercised will cause the compensation paid upon the exercise of the option to be nonperformance based. Section 1.162–27(e)(2)(vi) of the final regulations provides that such dividend equivalents will not cause the compensation paid upon the exercise of the option to be nonperformance based, provided that the payment of the dividend equivalents is not conditioned upon the employee exercising the option. If the payment of the dividend equivalent is conditioned upon the employee exercising the option, the dividend effectively reduces the exercise price of the option, thereby causing the option to be nonperformance based upon its exercise.

Bonus Pools

Section 1.162–27(e)(2)(ii) of the proposed regulations provides that a preestablished performance goal must state, in terms of an objective formula or standard, the method for computing the amount of compensation payable to the employee if the goal is attained. A formula or standard is objective if a third party having knowledge of the relevant performance results could calculate the amount to be paid to the employee.

Section 1.162–27(e)(2)(iii) prohibits discretion to increase the amount of compensation to be paid under the preestablished performance goal, but permits the compensation committee to reduce or eliminate the compensation that is due upon attainment of the goal.

Examples 7 and 8 under § 1.162–27(e)(2)(vii) of the proposed regulations illustrated the application of these rules to bonus pools. In Example 7, the amount of the bonus pool was determined under an objective formula. However, because the compensation committee retained the discretion to determine the fraction of the bonus pool that each covered employee would receive, the compensation that any individual could receive was not determined under an objective formula and, therefore, the bonus plan did not satisfy the requirements of paragraph (e)(2). In Example 8, the compensation for any individual was determined under an objective formula because each employee's share of the bonus pool was specified and because, notwithstanding the compensation committee's ability to reduce the compensation payable to each individual employee, a reduction in one employee's bonus would not result in an increase in the amount of any other employee's bonus.

Several commentators have indicated that, in some cases where compensation committees have stated the amount payable to each individual under a bonus pool plan as a percentage of the bonus pool, the total of these percentages has exceeded 100 percent of the pool. The use of such overlapping percentages is inconsistent with § 1.162–27(e)(2), as illustrated by both Example 7 and Example 8. As noted, Example 8 states that negative discretion will not cause the bonus plan to fail to satisfy the requirements of paragraph (e)(2), ''provided that a reduction in the amount of one employee's bonus does not result in an increase in the amount of any other employee's bonus.'' Where the total of the percentages payable under a bonus pool plan exceeds 100 percent, it is impossible to award each individual the

stated percentage, and this necessary exercise of negative discretion with respect to one or more employees means that it is impossible for a third party, with knowledge of the relevant performance results, to calculate the amount to be paid to each employee. Further, a reduction in at least some employees' bonuses will result in an increase in the amount available to pay other employees' bonuses.

Accordingly, § 1.162–27(e)(2)(iii) is amended to state more clearly that, when the compensation to be paid to each employee is stated in terms of a percentage of a bonus pool, the sum of the individual percentages for all participants in the pool cannot exceed 100 percent. In addition, the principle stated in Example 8, that the exercise of negative discretion with respect to one employee cannot increase the amount payable to another employee, is incorporated in paragraph (e)(2)(iii). Example 8 is also revised to more clearly illustrate this rule.

Although the IRS and Treasury believe that the changes made merely clarify the proposed regulations, it is recognized that others have interpreted the language of the proposed regulations differently. Therefore, under § 1.162–27(j)(2)(iv), this clarified rule will not be applied to any compensation paid before January 1, 2001, under a bonus pool based on performance in any period that began before December 20, 1995.

Outside Directors

Section 1.162–27(e)(3)(vi) provides that a director is not precluded from being an outside director solely because he or she is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. The regulation is revised to clarify that a former officer of either a spun off or liquidated corporation, that formerly was a member of the affiliated group, is not precluded from serving on the compensation committee of the publicly held member of the affiliated group.

Companies that Become Publicly Held Without an Initial Public Offering

Under § 1.162–27(f), the $1 million deduction limit does not apply to any compensation plan or agreement that existed before the corporation became publicly held to the extent that the plan or agreement was disclosed in the prospectus accompanying the initial public offering (IPO). This exception may be relied on until the earliest of: (1) the expiration of the plan or agreement, (2) the material modification of the plan or agreement, (3) the issuance of all stock and other compensation that has been allocated under the plan, or (4) the first shareholder meeting at which directors will be elected that occurs after the close of the third calendar year following the calendar year in which the IPO occurs.

Commentators have asked whether this rule applies to corporations that become publicly held without an IPO.

As indicated in the legislative history accompanying Code section 162(m), the prospectus that accompanies the IPO provides an opportunity to disclose the terms of the plan or agreement to the potential shareholders, and the subsequent purchase of the stock with that knowledge may be viewed as tantamount to a favorable vote on the compensation arrangement. When a corporation becomes publicly held without an IPO, there is no comparable alternative means of satisfying the requirements of section 162(m)(4)(C)(ii). On the other hand, because there is no requirement for privately held corporations to comply with section 162(m), the IRS and Treasury recognize the need for a transition rule for plans and agreements that are in existence when a privately held corporation becomes publicly held without an IPO.

Accordingly, § 1.162–27(f)(1) is revised to provide relief for privately held corporations that become publicly held without an IPO. Under the transition rule for these corporations, the reliance period in § 1.162–27(f)(2) lapses upon the first meeting of shareholders at which directors are to be elected that occurs after the close of the first calendar year following the calendar year in which the corporation becomes publicly held.

Written Binding Contracts

Section 1.162–27(h)(1) provides the transition rules for compensation payable under a written binding contract that was in effect on February 17, 1993. Under those rules, a written binding contract that is terminable or cancelable by the corporation after February 17, 1993, without the employee's consent is treated as a new contract as of the date that any such termination or cancelation, if made, would be effective. The proposed regulations further provide that, if the terms of a contract provide that the contract will be terminated or canceled as of a certain date unless either the corporation or the employee elects to renew within 30 days of that date, the contract is treated as renewed by the corporation as of that date.

Commentators have suggested that these regulations clarify the outcome where a corporation will remain bound by the terms of a contract beyond a certain date at the sole discretion of the employee. For example, if a contract that is in effect on February 17, 1993, provides that the employee has the sole discretion to extend or renew the terms beyond its stated expiration, without the consent of the corporation, a question arises whether the contract will be considered a pre-February 17, 1993 written binding contract after the employee chooses to extend.

Generally, the question of whether the terms of a contract are binding is determined under state law. The IRS and Treasury believe that the rules for determining whether a contract is binding should be applied based on whether the corporation is bound by the terms of the contract. Thus, if a contract provides the employee with the right to extend or renew its terms without the consent of the corporation, and the corporation is legally obligated to pay the agreed-upon compensation to the employee if the employee chooses to extend or renew the contract, the contract will be considered binding on the corporation. Accordingly, a new sentence has been added to § 1.162–27(h)(1)(i) to clarify that, if the corporation will remain legally obligated by the terms of a contract beyond a certain date at the sole discretion of the employee, the contract will not be treated as a new contract as of that date if the employee exercises the discretion.

Awards Based on a Percentage of Salary

The 1994 amendments modified § 1.162–27(e)(2)(iii) to provide that, if the terms of an objective formula or standard fail to preclude discretion merely because the amount of compensation to be paid upon attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay, the objective formula or standard will not be considered discretionary (and thus § 1.162–27(e)(2)(iii) will not be violated) if the maximum dollar amount to be paid is fixed at the time the performance goal is established. The final regulations clarify that a maximum dollar amount need not be specified under this provision if, at the time the performance goal is established, the dollar amount of salary or base pay is fixed. In such a case, the use of salary or base pay does not cause the formula to fail to preclude discretion to increase compensation.

The 1994 amendments made a corresponding amendment with respect to salary-based formulas to the shareholder disclosure rules in § 1.162–27(e)(4)(i). However, the shareholder disclosure amendment was not

explicitly limited to formulas that would otherwise be discretionary. The final regulations clarify that the shareholder disclosure rule relating to salary-based formulas applies only to those formulas that would otherwise be discretionary.

In addition, the final regulations provide transition relief with respect to the 1994 amendment of the shareholder disclosure requirement relating to salary-based formulas. New § 1.162–27(j)(2)(v) provides that this disclosure requirement applies only to plans approved by shareholders after April 30, 1995.

In the case of a preestablished performance goal that was established prior to the publication of the 1994 amendments, a corporation could, of course, rely upon a reasonable good faith interpretation of the statutory provisions to determine that the performance goal was stated in terms of an objective formula, to the extent the issue to which the interpretation relates was not covered by the 1993 regulations. An award made pursuant to such a performance goal would not fail to be performance based merely because the award was made after the publication of the 1994 amendments.

Stock-Based Compensation

The 1993 proposed regulations provided transition relief for previously approved plans and agreements that did not satisfy the written binding contract requirement as of February 17, 1993, but that were approved by shareholders before December 20, 1993. See § 1.162–27(h)(3)(iii). The transition relief applied to compensation paid prior to the expiration of a reliance period. In response to comments on the 1993 proposed regulations, the 1994 amendments expanded this relief to encompass compensation paid after the reliance period with respect to the exercise of stock options and stock appreciation rights, and the substantial vesting of restricted property, provided that the stock option, stock appreciation right, or restricted property was granted during the reliance period. Similar relief provisions were also included in new transition rules added by the 1994 amendments. (See §§ 1.162–27(f)(3), (f)(4), (j)(2)(ii), and (j)(2)(iii) of the final regulations.)

Commentators have asked that the relief provided in the 1994 amendments for stock options, stock appreciation rights, and restricted property be extended even further to cover other stock-based compensation and deferred compensation in general. After careful consideration of the comments received, the IRS and Treasury have concluded that there is not adequate justification for a further expansion of the 1994 expansion of the prior regulatory transition relief for previously approved plans and agreements, or the other similar relief provisions added in 1994.

Subsidiaries That Become Separate Publicly Held Corporations

Section 1.162–27(f)(4) of the proposed regulations contains special rules for subsidiaries that become separate publicly held corporations. A transition rule set forth in § 1.162–27(i)(2)(iii) of the proposed regulations specified delayed effective dates for these special rules. However, commentators indicated that the regulations were not explicit as to which rules applied prior to the delayed effective dates.

The final regulations clarify that compensation paid prior to the delayed effective dates by a subsidiary that becomes a separate publicly held corporation will not be subject to the $1 million deduction limit if the conditions of the transition rule are satisfied. (This transition rule and all other effective date provisions have been moved from paragraph (i) to paragraph (j) of the final regulations. Paragraph (i) is reserved.)

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Charles T. Deliee and Robert Misner, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–27 is added to read as follows:

§ 1.162–27 Certain employee remuneration in excess of $1,000,000.

(a) *Scope*. This section provides rules for the application of the $1 million deduction limit under section 162(m) of the Internal Revenue Code. Paragraph (b) of this section provides the general rule limiting deductions under section 162(m). Paragraph (c) of this section provides definitions of generally applicable terms. Paragraph (d) of this section provides an exception from the deduction limit for compensation payable on a commission basis. Paragraph (e) of this section provides an exception for qualified performance-based compensation. Paragraphs (f) and (g) of this section provide special rules for corporations that become publicly held corporations and payments that are subject to section 280G, respectively. Paragraph (h) of this section provides transition rules, including the rules for contracts that are grandfathered and not subject to section 162(m). Paragraph (j) of this section contains the effective date provisions. For rules concerning the deductibility of compensation for services that are not covered by section 162(m) and this section, see section 162(a)(1) and § 1.162–7. This section is not determinative as to whether compensation meets the requirements of section 162(a)(1).

(b) *Limitation on deduction*. Section 162(m) precludes a deduction under chapter 1 of the Internal Revenue Code by any publicly held corporation for compensation paid to any covered employee to the extent that the compensation for the taxable year exceeds $1,000,000.

(c) *Definitions*—(1) *Publicly held corporation*—(i) *General rule*. A *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act. A corporation is not considered publicly held if the registration of its equity securities is voluntary. For purposes of this section, whether a corporation is

publicly held is determined based solely on whether, as of the last day of its taxable year, the corporation is subject to the reporting obligations of section 12 of the Exchange Act.

(ii) *Affiliated groups.* A publicly held corporation includes an affiliated group of corporations, as defined in section 1504 (determined without regard to section 1504(b)). For purposes of this section, however, an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation. Such a publicly held subsidiary, and its subsidiaries (if any), are separately subject to this section. If a covered employee is paid compensation in a taxable year by more than one member of an affiliated group, compensation paid by each member of the affiliated group is aggregated with compensation paid to the covered employee by all other members of the group. Any amount disallowed as a deduction by this section must be prorated among the payor corporations in proportion to the amount of compensation paid to the covered employee by each such corporation in the taxable year.

(2) *Covered employee*—(i) *General rule.* A *covered employee* means any individual who, on the last day of the taxable year, is—

(A) The chief executive officer of the corporation or is acting in such capacity; or

(B) Among the four highest compensated officers (other than the chief executive officer).

(ii) *Application of rules of the Securities and Exchange Commission.* Whether an individual is the chief executive officer described in paragraph (c)(2)(i)(A) of this section or an officer described in paragraph (c)(2)(i)(B) of this section is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(3) *Compensation*—(i) *In general.* For purposes of the deduction limitation described in paragraph (b) of this section, *compensation* means the aggregate amount allowable as a deduction under chapter 1 of the Internal Revenue Code for the taxable year (determined without regard to section 162(m)) for remuneration for services performed by a covered employee, whether or not the services were performed during the taxable year.

(ii) *Exceptions. Compensation* does not include—

(A) Remuneration covered in section 3121(a)(1) through section 3121(a)(5)(D) (concerning remuneration that is not treated as *wages* for purposes of the Federal Insurance Contributions Act); and

(B) Remuneration consisting of any benefit provided to or on behalf of an employee if, at the time the benefit is provided, it is reasonable to believe that the employee will be able to exclude it from gross income. In addition, compensation does not include salary reduction contributions described in section 3121(v)(1).

(4) *Compensation Committee.* The *compensation committee* means the committee of directors (including any subcommittee of directors) of the publicly held corporation that has the authority to establish and administer performance goals described in paragraph (e)(2) of this section, and to certify that performance goals are attained, as described in paragraph (e)(5) of this section. A committee of directors is not treated as failing to have the authority to establish performance goals merely because the goals are ratified by the board of directors of the publicly held corporation or, if applicable, any other committee of the board of directors. See paragraph (e)(3) of this section for rules concerning the composition of the compensation committee.

(5) *Exchange Act.* The *Exchange Act* means the Securities Exchange Act of 1934.

(6) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. Corporation X is a publicly held corporation with a July 1 to June 30 fiscal year. For Corporation X's taxable year ending on June 30, 1995, Corporation X pays compensation of $2,000,000 to A, an employee. However, A's compensation is not required to be reported to shareholders under the executive compensation disclosure rules of the Exchange Act because A is neither the chief executive officer nor one of the four highest compensated officers employed on the last day of the taxable year. A's compensation is not subject to the deduction limitation of paragraph (b) of this section.

Example 2. C, a covered employee, performs services and receives compensation from Corporations X, Y, and Z, members of an affiliated group of corporations. Corporation X, the parent corporation, is a publicly held corporation. The total compensation paid to C from all affiliated group members is $3,000,000 for the taxable year, of which Corporation X pays $1,500,000; Corporation Y pays $900,000; and Corporation Z pays $600,000. Because the compensation paid by all affiliated group members is aggregated for purposes of section 162(m), $2,000,000 of the aggregate compensation paid is nondeductible. Corporations X, Y, and Z each are treated as paying a ratable portion of the nondeductible compensation. Thus, two thirds of each corporation's payment will be nondeductible. Corporation X has a nondeductible compensation expense of $1,000,000 ($1,500,000×$2,000,000/$3,000,000). Corporation Y has a nondeductible compensation expense of $600,000 ($900,000×$2,000,000/$3,000,000). Corporation Z has a nondeductible compensation expense of $400,000 ($600,000×$2,000,000/$3,000,000).

Example 3. Corporation W, a calendar year taxpayer, has total assets equal to or exceeding $5 million and a class of equity security held of record by 500 or more persons on December 31, 1994. However, under the Exchange Act, Corporation W is not required to file a registration statement with respect to that security until April 30, 1995. Thus, Corporation W is not a publicly held corporation on December 31, 1994, but is a publicly held corporation on December 31, 1995.

Example 4. The facts are the same as in *Example 3*, except that on December 15, 1996, Corporation W files with the Securities and Exchange Commission to disclose that Corporation W is no longer required to be registered under section 12 of the Exchange Act and to terminate its registration of securities under that provision. Because Corporation W is no longer subject to Exchange Act reporting obligations as of December 31, 1996, Corporation W is not a publicly held corporation for taxable year 1996, even though the registration of Corporation W's securities does not terminate until 90 days after Corporation W files with the Securities and Exchange Commission.

(d) *Exception for compensation paid on a commission basis.* The deduction limit in paragraph (b) of this section shall not apply to any compensation paid on a commission basis. For this purpose, compensation is paid on a commission basis if the facts and circumstances show that it is paid solely on account of income generated directly by the individual performance of the individual to whom the compensation is paid. Compensation does not fail to be attributable directly to the individual merely because support services, such as secretarial or research services, are utilized in generating the income. However, if compensation is paid on account of broader performance standards, such as income produced by a business unit of the corporation, the compensation does not qualify for the exception provided under this paragraph (d).

(e) *Exception for qualified performance-based compensation*—

(1) *In general.* The deduction limit in paragraph (b) of this section does not apply to qualified performance-based compensation. Qualified performance-based compensation is compensation that meets all of the requirements of paragraphs (e)(2) through (e)(5) of this section.

(2) *Performance goal requirement*—(i) *Preestablished goal.* Qualified performance-based compensation must be paid solely on account of the attainment of one or more

preestablished, objective performance goals. A performance goal is considered preestablished if it is established in writing by the compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates, provided that the outcome is substantially uncertain at the time the compensation committee actually establishes the goal. However, in no event will a performance goal be considered to be preestablished if it is established after 25 percent of the period of service (as scheduled in good faith at the time the goal is established) has elapsed. A performance goal is objective if a third party having knowledge of the relevant facts could determine whether the goal is met. Performance goals can be based on one or more business criteria that apply to the individual, a business unit, or the corporation as a whole. Such business criteria could include, for example, stock price, market share, sales, earnings per share, return on equity, or costs. A performance goal need not, however, be based upon an increase or positive result under a business criterion and could include, for example, maintaining the status quo or limiting economic losses (measured, in each case, by reference to a specific business criterion). A performance goal does not include the mere continued employment of the covered employee. Thus, a vesting provision based solely on continued employment would not constitute a performance goal. See paragraph (e)(2)(vi) of this section for rules on compensation that is based on an increase in the price of stock.

(ii) *Objective compensation formula.* A preestablished performance goal must state, in terms of an objective formula or standard, the method for computing the amount of compensation payable to the employee if the goal is attained. A formula or standard is objective if a third party having knowledge of the relevant performance results could calculate the amount to be paid to the employee. In addition, a formula or standard must specify the individual employees or class of employees to which it applies.

(iii) *Discretion.*

(A) The terms of an objective formula or standard must preclude discretion to increase the amount of compensation payable that would otherwise be due upon attainment of the goal. A performance goal is not discretionary for purposes of this paragraph (e)(2)(iii) merely because the compensation committee reduces or eliminates the compensation or other economic benefit that was due upon attainment of the goal. However, the exercise of negative discretion with respect to one employee is not permitted to result in an increase in the amount payable to another employee. Thus, for example, in the case of a bonus pool, if the amount payable to each employee is stated in terms of a percentage of the pool, the sum of these individual percentages of the pool is not permitted to exceed 100 percent. If the terms of an objective formula or standard fail to preclude discretion to increase the amount of compensation merely because the amount of compensation to be paid upon attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay and the dollar amount of the salary or base pay is not fixed at the time the performance goal is established, then the objective formula or standard will not be considered discretionary for purposes of this paragraph (e)(2)(iii) if the maximum dollar amount to be paid is fixed at that time.

(B) If compensation is payable upon or after the attainment of a performance goal, and a change is made to accelerate the payment of compensation to an earlier date after the attainment of the goal, the change will be treated as an increase in the amount of compensation, unless the amount of compensation paid is discounted to reasonably reflect the time value of money. If compensation is payable upon or after the attainment of a performance goal, and a change is made to defer the payment of compensation to a later date, any amount paid in excess of the amount that was originally owed to the employee will not be treated as an increase in the amount of compensation if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments (whether or not assets associated with the amount originally owed are actually invested therein) such that the amount payable by the employer at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment). If compensation is payable in the form of property, a change in the timing of the transfer of that property after the attainment of the goal will not be treated as an increase in the amount of compensation for purposes of this paragraph (e)(2)(iii). Thus, for example, if the terms of a stock grant provide for stock to be transferred after the attainment of a performance goal and the transfer of the stock also is subject to a vesting schedule, a change in the vesting schedule that either accelerates or defers the transfer of stock will not be treated as an increase in the amount of compensation payable under the performance goal.

(C) Compensation attributable to a stock option, stock appreciation right, or other stock-based compensation does not fail to satisfy the requirements of this paragraph (e)(2) to the extent that a change in the grant or award is made to reflect a change in corporate capitalization, such as a stock split or dividend, or a corporate transaction, such as any merger of a corporation into another corporation, any consolidation of two or more corporations into another corporation, any separation of a corporation (including a spinoff or other distribution of stock or property by a corporation), any reorganization of a corporation (whether or not such reorganization comes within the definition of such term in section 368), or any partial or complete liquidation by a corporation.

(iv) *Grant-by-grant determination.* The determination of whether compensation satisfies the requirements of this paragraph (e)(2) generally shall be made on a grant-by-grant basis. Thus, for example, whether compensation attributable to a stock option grant satisfies the requirements of this paragraph (e)(2) generally is determined on the basis of the particular grant made and without regard to the terms of any other option grant, or other grant of compensation, to the same or another employee. As a further example, except as provided in paragraph (e)(2)(vi), whether a grant of restricted stock or other stock-based compensation satisfies the requirements of this paragraph (e)(2) is determined without regard to whether dividends, dividend equivalents, or other similar distributions with respect to stock, on such stock-based compensation are payable prior to the attainment of the performance goal. Dividends, dividend equivalents, or other similar distributions with respect to stock that are treated as separate grants under this paragraph (e)(2)(iv) are not performance-based compensation unless they separately satisfy the requirements of this paragraph (e)(2).

(v) *Compensation contingent upon attainment of performance goal.* Compensation does not satisfy the requirements of this paragraph (e)(2) if the facts and circumstances indicate that the employee would receive all or part of the compensation regardless of whether the performance goal is attained. Thus, if the payment of compensation under a grant or award is only nominally or partially contingent on attaining a performance goal, none of the compensation payable under the

grant or award will be considered performance-based. For example, if an employee is entitled to a bonus under either of two arrangements, where payment under a nonperformance-based arrangement is contingent upon the failure to attain the performance goals under an otherwise performance-based arrangement, then neither arrangement provides for compensation that satisfies the requirements of this paragraph (e)(2). Compensation does not fail to be qualified performance-based compensation merely because the plan allows the compensation to be payable upon death, disability, or change of ownership or control, although compensation actually paid on account of those events prior to the attainment of the performance goal would not satisfy the requirements of this paragraph (e)(2). As an exception to the general rule set forth in the first sentence of paragraph (e)(2)(iv) of this section, the facts-and-circumstances determination referred to in the first sentence of this paragraph (e)(2)(v) is made taking into account all plans, arrangements, and agreements that provide for compensation to the employee.

(vi) *Application of requirements to stock options and stock appreciation rights*—(A) *In general.* Compensation attributable to a stock option or a stock appreciation right is deemed to satisfy the requirements of this paragraph (e)(2) if the grant or award is made by the compensation committee; the plan under which the option or right is granted states the maximum number of shares with respect to which options or rights may be granted during a specified period to any employee; and, under the terms of the option or right, the amount of compensation the employee could receive is based solely on an increase in the value of the stock after the date of the grant or award. Conversely, if the amount of compensation the employee will receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (e.g., in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation because it does not satisfy the requirement of this paragraph (e)(2)(vi)(A). Whether a stock option grant is based solely on an increase in the value of the stock after the date of grant is determined without regard to any dividend equivalent that may be payable, provided that payment of the dividend equivalent is not made contingent on the exercise of the option. The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

(B) *Cancellation and repricing.* Compensation attributable to a stock option or stock appreciation right does not satisfy the requirements of this paragraph (e)(2) to the extent that the number of options granted exceeds the maximum number of shares for which options may be granted to the employee as specified in the plan. If an option is canceled, the canceled option continues to be counted against the maximum number of shares for which options may be granted to the employee under the plan. If, after grant, the exercise price of an option is reduced, the transaction is treated as a cancellation of the option and a grant of a new option. In such case, both the option that is deemed to be canceled and the option that is deemed to be granted reduce the maximum number of shares for which options may be granted to the employee under the plan. This paragraph (e)(2)(vi)(B) also applies in the case of a stock appreciation right where, after the award is made, the base amount on which stock appreciation is calculated is reduced to reflect a reduction in the fair market value of stock.

(vii) *Examples.* This paragraph (e)(2) may be illustrated by the following examples:

Example 1. No later than 90 days after the start of a fiscal year, but while the outcome is substantially uncertain, Corporation S establishes a bonus plan under which A, the chief executive officer, will receive a cash bonus of $500,000, if year-end corporate sales are increased by at least 5 percent. The compensation committee retains the right, if the performance goal is met, to reduce the bonus payment to A if, in its judgment, other subjective factors warrant a reduction. The bonus will meet the requirements of this paragraph (e)(2).

Example 2. The facts are the same as in *Example 1,* except that the bonus is based on a percentage of Corporation S's total sales for the fiscal year. Because Corporation S is virtually certain to have some sales for the fiscal year, the outcome of the performance goal is not substantially uncertain, and therefore the bonus does not meet the requirements of this paragraph (e)(2).

Example 3. The facts are the same as in *Example 1,* except that the bonus is based on a percentage of Corporation S's total profits for the fiscal year. Although some sales are virtually certain for virtually all public companies, it is substantially uncertain whether a company will have profits for a specified future period even if the company has a history of profitability. Therefore, the bonus will meet the requirements of this paragraph (e)(2).

Example 4. B is the general counsel of Corporation R, which is engaged in patent litigation with Corporation S. Representatives of Corporation S have informally indicated to Corporation R a willingness to settle the litigation for $50,000,000. Subsequently, the compensation committee of Corporation R agrees to pay B a bonus if B obtains a formal settlement for at least $50,000,000. The bonus to B does not meet the requirement of this paragraph (e)(2) because the performance goal was not established at a time when the outcome was substantially uncertain.

Example 5. Corporation S, a public utility, adopts a bonus plan for selected salaried employees that will pay a bonus at the end of a 3-year period of $750,000 each if, at the end of the 3 years, the price of S stock has increased by 10 percent. The plan also provides that the 10-percent goal will automatically adjust upward or downward by the percentage change in a published utilities index. Thus, for example, if the published utilities index shows a net increase of 5 percent over a 3-year period, then the salaried employees would receive a bonus only if Corporation S stock has increased by 15 percent. Conversely, if the published utilities index shows a net decrease of 5 percent over a 3-year period, then the salaried employees would receive a bonus if Corporation S stock has increased by 5 percent. Because these automatic adjustments in the performance goal are preestablished, the bonus meets the requirement of this paragraph (e)(2), notwithstanding the potential changes in the performance goal.

Example 6. The facts are the same as in *Example 5,* except that the bonus plan provides that, at the end of the 3-year period, a bonus of $750,000 will be paid to each salaried employee if either the price of Corporation S stock has increased by 10 percent or the earnings per share on Corporation S stock have increased by 5 percent. If both the earnings-per-share goal and the stock-price goal are preestablished, the compensation committee's discretion to choose to pay a bonus under either of the two goals does not cause any bonus paid under the plan to fail to meet the requirement of this paragraph (e)(2) because each goal independently meets the requirements of this paragraph (e)(2). The choice to pay under either of the two goals is tantamount to the discretion to choose not to pay under one of the goals, as provided in paragraph (e)(2)(iii) of this section.

Example 7. Corporation U establishes a bonus plan under which a specified class of employees will participate in a bonus pool if certain preestablished performance goals are attained. The amount of the bonus pool is determined under an objective formula. Under the terms of the bonus plan, the compensation committee retains the discretion to determine the fraction of the bonus pool that each employee may receive.

The bonus plan does not satisfy the requirements of this paragraph (e)(2). Although the aggregate amount of the bonus plan is determined under an objective formula, a third party could not determine the amount that any individual could receive under the plan.

Example 8. The facts are the same as in *Example 7,* except that the bonus plan provides that a specified share of the bonus pool is payable to each employee, and the total of these shares does not exceed 100% of the pool. The bonus plan satisfies the requirements of this paragraph (e)(2). In addition, the bonus plan will satisfy the requirements of this paragraph (e)(2) even if the compensation committee retains the discretion to reduce the compensation payable to any individual employee, provided that a reduction in the amount of one employee's bonus does not result in an increase in the amount of any other employee's bonus.

Example 9. Corporation V establishes a stock option plan for salaried employees. The terms of the stock option plan specify that no salaried employee shall receive options for more than 100,000 shares over any 3-year period. The compensation committee grants options for 50,000 shares to each of several salaried employees. The exercise price of each option is equal to or greater than the fair market value at the time of each grant. Compensation attributable to the exercise of the options satisfies the requirements of this paragraph (e)(2). If, however, the terms of the options provide that the exercise price is less than fair market value at the date of grant, no compensation attributable to the exercise of those options satisfies the requirements of this paragraph (e)(2) unless issuance or exercise of the options was contingent upon the attainment of a preestablished performance goal that satisfies this paragraph (e)(2).

Example 10. The facts are the same as in *Example 9,* except that, within the same 3-year grant period, the fair market value of Corporation V stock is significantly less than the exercise price of the options. The compensation committee reprices those options to that lower current fair market value of Corporation V stock. The repricing of the options for 50,000 shares held by each salaried employee is treated as the grant of new options for an additional 50,000 shares to each employee. Thus, each of the salaried employees is treated as having received grants for 100,000 shares. Consequently, if any additional options are granted to those employees during the 3-year period, compensation attributable to the exercise of those additional options would not satisfy the requirements of this paragraph (e)(2). The results would be the same if the compensation committee canceled the outstanding options and issued new options to the same employees that were exercisable at the fair market value of Corporation V stock on the date of reissue.

Example 11. Corporation W maintains a plan under which each participating employee may receive incentive stock options, nonqualified stock options, stock appreciation rights, or grants of restricted Corporation W stock. The plan specifies that each participating employee may receive options, stock appreciation rights, restricted stock, or any combination of each, for no more than 20,000 shares over the life of the plan. The plan provides that stock options may be granted with an exercise price of less than, equal to, or greater than fair market value on the date of grant. Options granted with an exercise price equal to, or greater than, fair market value on the date of grant do not fail to meet the requirements of this paragraph (e)(2) merely because the compensation committee has the discretion to determine the types of awards (i.e., options, rights, or restricted stock) to be granted to each employee or the discretion to issue options or make other compensation awards under the plan that would not meet the requirements of this paragraph (e)(2). Whether an option granted under the plan satisfies the requirements of this paragraph (e)(2) is determined on the basis of the specific terms of the option and without regard to other options or awards under the plan.

Example 12. Corporation X maintains a plan under which stock appreciation rights may be awarded to key employees. The plan permits the compensation committee to make awards under which the amount of compensation payable to the employee is equal to the increase in the stock price plus a percentage ''gross up'' intended to offset the tax liability of the employee. In addition, the plan permits the compensation committee to make awards under which the amount of compensation payable to the employee is equal to the increase in the stock price, based on the highest price, which is defined as the highest price paid for Corporation X stock (or offered in a tender offer or other arms-length offer) during the 90 days preceding exercise. Compensation attributable to awards under the plan satisfies the requirements of paragraph (e)(2)(vi) of this section, provided that the terms of the plan specify the maximum number of shares for which awards may be made.

Example 13. Corporation W adopts a plan under which a bonus will be paid to the CEO only if there is a 10% increase in earnings per share during the performance period. The plan provides that earnings per share will be calculated without regard to any change in accounting standards that may be required by the Financial Accounting Standards Board after the goal is established. After the goal is established, such a change in accounting standards occurs. Corporation W's reported earnings, for purposes of determining earnings per share under the plan, are adjusted pursuant to this plan provision to factor out this change in standards. This adjustment will not be considered an exercise of impermissible discretion because it is made pursuant to the plan provision.

Example 14. Corporation X adopts a performance-based incentive pay plan with a four-year performance period. Bonuses under the plan are scheduled to be paid in the first year after the end of the performance period (year 5). However, in the second year of the performance period, the compensation committee determines that any bonuses payable in year 5 will instead, for bona fide business reasons, be paid in year 10. The compensation committee also determines that any compensation that would have been payable in year 5 will be adjusted to reflect the delay in payment. The adjustment will be based on the greater of the future rate of return of a specified mutual fund that invests in blue chip stocks or of a specified venture capital investment over the five-year deferral period. Each of these investments, considered by itself, is a predetermined actual investment because it is based on the future rate of return of an actual investment. However, the adjustment in this case is not based on predetermined actual investments within the meaning of paragraph (e)(2)(iii)(B) of this section because the amount payable by Corporation X in year 10 will be based on the greater of the two investment returns and, thus, will not be based on the actual rate of return on either specific investment.

Example 15. The facts are the same as in *Example 14,* except that the increase will be based on Moody's Average Corporate Bond Yield over the five-year deferral period. Because this index reflects a reasonable rate of interest, the increase in the compensation payable that is based on the index's rate of return is not considered an impermissible increase in the amount of compensation payable under the formula.

Example 16. The facts are the same as in *Example 14,* except that the increase will be based on the rate of return for the Standard & Poor's 500 Index. This index does not measure interest rates and thus does not represent a reasonable rate of interest. In addition, this index does not represent an actual investment. Therefore, any additional compensation payable based on the rate of return of this index will result in an impermissible increase in the amount payable under the formula. If, in contrast, the increase were based on the rate of return of an existing mutual fund that is invested in a manner that seeks to approximate the Standard & Poor's 500 Index, the increase would be based on a predetermined actual investment within the meaning of paragraph (e)(2)(iii)(B) of this section and thus would not result in an impermissible increase in the amount payable under the formula.

(3) *Outside directors*—(i) *General rule.* The performance goal under which compensation is paid must be established by a compensation committee comprised solely of two or more outside directors. A director is an outside director if the director—

(A) Is not a current employee of the publicly held corporation;

(B) Is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year;

(C) Has not been an officer of the publicly held corporation; and

(D) Does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services.

(ii) *Remuneration received.* For purposes of this paragraph (e)(3), remuneration is received, directly or indirectly, by a director in each of the following circumstances:

(A) If remuneration is paid, directly or indirectly, to the director personally or to an entity in which the director has a beneficial ownership interest of greater than 50 percent. For this purpose, remuneration is considered paid when actually paid (and throughout the remainder of that taxable year of the corporation) and, if earlier, throughout the period when a contract or agreement to pay remuneration is outstanding.

(B) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity in which the director has a beneficial ownership interest of at least 5 percent but not more than 50 percent. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

(C) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity by which the director is employed or self-employed other than as a director. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

(iii) *De minimis remuneration*—(A) *In general.* For purposes of paragraphs (e)(3)(ii)(B) and (C) of this section, remuneration that was paid by the publicly held corporation in its preceding taxable year to an entity is de minimis if payments to the entity did not exceed 5 percent of the gross revenue of the entity for its taxable year ending with or within that preceding taxable year of the publicly held corporation.

(B) *Remuneration for personal services and substantial owners.* Notwithstanding paragraph (e)(3)(iii)(A) of this section, remuneration in excess of $60,000 is not de minimis if the remuneration is paid to an entity described in paragraph (e)(3)(ii)(B) of this section, or is paid for personal services to an entity described in paragraph (e)(3)(ii)(C) of this section.

(iv) *Remuneration for personal services.* For purposes of paragraph (e)(3)(iii)(B) of this section, remuneration from a publicly held corporation is for personal services if—

(A) The remuneration is paid to an entity for personal or professional services, consisting of legal, accounting, investment banking, and management consulting services (and other similar services that may be specified by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin), performed for the publicly held corporation, and the remuneration is not for services that are incidental to the purchase of goods or to the purchase of services that are not personal services; and

(B) The director performs significant services (whether or not as an employee) for the corporation, division, or similar organization (within the entity) that actually provides the services described in paragraph (e)(3)(iv)(A) of this section to the publicly held corporation, or more than 50 percent of the entity's gross revenues (for the entity's preceding taxable year) are derived from that corporation, subsidiary, or similar organization.

(v) *Entity defined.* For purposes of this paragraph (e)(3), entity means an organization that is a sole proprietorship, trust, estate, partnership, or corporation. The term also includes an affiliated group of corporations as defined in section 1504 (determined without regard to section 1504(b)) and a group of organizations that would be an affiliated group but for the fact that one or more of the organizations are not incorporated. However, the aggregation rules referred to in the preceding sentence do not apply for purposes of determining whether a director has a beneficial ownership interest of at least 5 percent or greater than 50 percent.

(vi) *Employees and former officers.* Whether a director is an employee or a former officer is determined on the basis of the facts at the time that the individual is serving as a director on the compensation committee. Thus, a director is not precluded from being an outside director solely because the director is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. For example, a director of a parent corporation of an affiliated group is not precluded from being an outside director solely because that director is a former officer of an affiliated subsidiary that was spun off or liquidated. However, an outside director would no longer be an outside director if a corporation in which the director was previously an officer became an affiliated corporation of the publicly held corporation.

(vii) *Officer.* Solely for purposes of this paragraph (e)(3), *officer* means an administrative executive who is or was in regular and continued service. The term implies continuity of service and excludes those employed for a special and single transaction. An individual who merely has (or had) the title of officer but not the authority of an officer is not considered an officer. The determination of whether an individual is or was an officer is based on all of the facts and circumstances in the particular case, including without limitation the source of the individual's authority, the term for which the individual is elected or appointed, and the nature and extent of the individual's duties.

(viii) *Members of affiliated groups.* For purposes of this paragraph (e)(3), the outside directors of the publicly held member of an affiliated group are treated as the outside directors of all members of the affiliated group.

(ix) *Examples.* This paragraph (e)(3) may be illustrated by the following examples:

Example 1. Corporations X and Y are members of an affiliated group of corporations as defined in section 1504, until July 1, 1994, when Y is sold to another group. Prior to the sale, A served as an officer of Corporation Y. After July 1, 1994, A is not treated as a former officer of Corporation X by reason of having been an officer of Y.

Example 2. Corporation Z, a calendar-year taxpayer, uses the services of a law firm by which B is employed, but in which B has a less-than-5-percent ownership interest. The law firm reports income on a July 1 to June 30 basis. Corporation Z appoints B to serve on its compensation committee for calendar year 1998 after determining that, in calendar year 1997, it did not become liable to the law firm for remuneration exceeding the lesser of $60,000 or five percent of the law firm's gross revenue (calculated for the year ending June 30, 1997). On October 1, 1998, Corporation Z becomes liable to pay remuneration of $50,000 to the law firm on June 30, 1999. For the year ending June 30, 1998, the law firm's gross revenue was less than $1 million. Thus, in calendar year 1999, B is not an outside director. However, B may satisfy the requirements for an outside director in calendar year 2000, if, in calendar year 1999, Corporation Z does not become liable to the law firm for additional remuneration. This is because the remuneration actually paid on June 30, 1999 was considered paid on October 1, 1998 under paragraph (e)(3)(ii)(C) of this section.

Example 3. Corporation Z, a publicly held corporation, purchases goods from Corporation A. D, an executive and less-than-5-percent owner of Corporation A, sits on the board of directors of Corporation Z and on its compensation committee. For 1997, Corporation Z obtains representations to the effect that D is not eligible for any commission for D's sales to Corporation Z and that, for purposes of determining D's compensation for 1997, Corporation A's sales to Corporation Z are not otherwise treated differently than sales to other customers of Corporation A (including its affiliates, if any) or are irrelevant. In addition, Corporation Z has no reason to believe that these representations are inaccurate or that it is otherwise paying remuneration indirectly to D personally. Thus, in 1997, no remuneration

is considered paid by Corporation Z indirectly to D personally under paragraph (e)(3)(ii)(A) of this section.

Example 4. (i) Corporation W, a publicly held corporation, purchases goods from Corporation T. C, an executive and less- than-5-percent owner of Corporation T, sits on the board of directors of Corporation W and on its compensation committee. Corporation T develops a new product and agrees on January 1, 1998 to pay C a bonus of $500,000 if Corporation W contracts to purchase the product. Even if Corporation W purchases the new product, sales to Corporation W will represent less than 5 percent of Corporation T's gross revenues. In 1999, Corporation W contracts to purchase the new product and, in 2000, C receives the $500,000 bonus from Corporation T. In 1998, 1999, and 2000, Corporation W does not obtain any representations relating to indirect remuneration to C personally (such as the representations described in *Example 3*).

(ii) Thus, in 1998, 1999, and 2000, remuneration is considered paid by Corporation W indirectly to C personally under paragraph (e)(3)(ii)(A) of this section. Accordingly, in 1998, 1999, and 2000, C is not an outside director of Corporation W. The result would have been the same if Corporation W had obtained appropriate representations but nevertheless had reason to believe that it was paying remuneration indirectly to C personally.

Example 5. Corporation R, a publicly held corporation, purchases utility service from Corporation Q, a public utility. The chief executive officer, and less-than-5-percent owner, of Corporation Q is a director of Corporation R. Corporation R pays Corporation Q more than $60,000 per year for the utility service, but less than 5 percent of Corporation Q's gross revenues. Because utility services are not personal services, the fees paid are not subject to the $60,000 de minimis rule for remuneration for personal services within the meaning of paragraph (e)(3)(iii)(B) of this section. Thus, the chief executive officer qualifies as an outside director of Corporation R, unless disqualified on some other basis.

Example 6. Corporation A, a publicly held corporation, purchases management consulting services from Division S of Conglomerate P. The chief financial officer of Division S is a director of Corporation A. Corporation A pays more than $60,000 per year for the management consulting services, but less than 5 percent of Conglomerate P's gross revenues. Because management consulting services are personal services within the meaning of paragraph (e)(3)(iv)(A) of this section, and the chief financial officer performs significant services for Division S, the fees paid are subject to the $60,000 de minimis rule as remuneration for personal services. Thus, the chief financial officer does not qualify as an outside director of Corporation A.

Example 7. The facts are the same as in *Example 6,* except that the chief executive officer, and less-than-5-percent owner, of the parent company of Conglomerate P is a director of Corporation A and does not perform significant services for Division S. If the gross revenues of Division S do not constitute more than 50 percent of the gross revenues of Conglomerate P for P's preceding taxable year, the chief executive officer will qualify as an outside director of Corporation A, unless disqualified on some other basis.

(4) *Shareholder approval requirement*—(i) *General rule.* The material terms of the performance goal under which the compensation is to be paid must be disclosed to and subsequently approved by the shareholders of the publicly held corporation before the compensation is paid. The requirements of this paragraph (e)(4) are not satisfied if the compensation would be paid regardless of whether the material terms are approved by shareholders. The material terms include the employees eligible to receive compensation; a description of the business criteria on which the performance goal is based; and either the maximum amount of compensation that could be paid to any employee or the formula used to calculate the amount of compensation to be paid to the employee if the performance goal is attained (except that, in the case of a formula that fails to preclude discretion to increase the amount of compensation (as described in paragraph (e)(2)(iii)(A) of this section) merely because the amount of compensation to be paid is based, in whole or in part, on a percentage of salary or base pay and the dollar amount of the salary or base pay is not fixed at the time the performance goal is established, the maximum dollar amount of compensation that could be paid to the employee must be disclosed).

(ii) *Eligible employees.* Disclosure of the employees eligible to receive compensation need not be so specific as to identify the particular individuals by name. A general description of the class of eligible employees by title or class is sufficient, such as the chief executive officer and vice presidents, or all salaried employees, all executive officers, or all key employees.

(iii) *Description of business criteria*—(A) *In general.* Disclosure of the business criteria on which the performance goal is based need not include the specific targets that must be satisfied under the performance goal. For example, if a bonus plan provides that a bonus will be paid if earnings per share increase by 10 percent, the 10-percent figure is a target that need not be disclosed to shareholders. However, in that case, disclosure must be made that the bonus plan is based on an earnings-per-share business criterion. In the case of a plan under which employees may be granted stock options or stock appreciation rights, no specific description of the business criteria is required if the grants or awards are based on a stock price that is no less than current fair market value.

(B) *Disclosure of confidential information.* The requirements of this paragraph (e)(4) may be satisfied even though information that otherwise would be a material term of a performance goal is not disclosed to shareholders, provided that the compensation committee determines that the information is confidential commercial or business information, the disclosure of which would have an adverse effect on the publicly held corporation. Whether disclosure would adversely affect the corporation is determined on the basis of the facts and circumstances. If the compensation committee makes such a determination, the disclosure to shareholders must state the compensation committee's belief that the information is confidential commercial or business information, the disclosure of which would adversely affect the company. In addition, the ability not to disclose confidential information does not eliminate the requirement that disclosure be made of the maximum amount of compensation that is payable to an individual under a performance goal. Confidential information does not include the identity of an executive or the class of executives to which a performance goal applies or the amount of compensation that is payable if the goal is satisfied.

(iv) *Description of compensation.* Disclosure as to the compensation payable under a performance goal must be specific enough so that shareholders can determine the maximum amount of compensation that could be paid to any employee during a specified period. If the terms of the performance goal do not provide for a maximum dollar amount, the disclosure must include the formula under which the compensation would be calculated. Thus, for example, if compensation attributable to the exercise of stock options is equal to the difference in the exercise price and the current value of the stock, disclosure would be required of the maximum number of shares for which grants may be made to any employee and the exercise price of those options (e.g., fair market value on date of grant). In that case, shareholders could calculate the maximum amount of compensation that would be attributable to the exercise of options on the basis of their assumptions as to the future stock price.

(v) *Disclosure requirements of the Securities and Exchange Commission.* To the extent not otherwise specifically provided in this paragraph (e)(4), whether the material terms of a

performance goal are adequately disclosed to shareholders is determined under the same standards as apply under the Exchange Act.

(vi) *Frequency of disclosure.* Once the material terms of a performance goal are disclosed to and approved by shareholders, no additional disclosure or approval is required unless the compensation committee changes the material terms of the performance goal. If, however, the compensation committee has authority to change the targets under a performance goal after shareholder approval of the goal, material terms of the performance goal must be disclosed to and reapproved by shareholders no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved the performance goal.

(vii) *Shareholder vote.* For purposes of this paragraph (e)(4), the material terms of a performance goal are approved by shareholders if, in a separate vote, a majority of the votes cast on the issue (including abstentions to the extent abstentions are counted as voting under applicable state law) are cast in favor of approval.

(viii) *Members of affiliated group.* For purposes of this paragraph (e)(4), the shareholders of the publicly held member of the affiliated group are treated as the shareholders of all members of the affiliated group.

(ix) *Examples.* This paragraph (e)(4) may be illustrated by the following examples:

Example 1. Corporation X adopts a plan that will pay a specified class of its executives an annual cash bonus based on the overall increase in corporate sales during the year. Under the terms of the plan, the cash bonus of each executive equals $100,000 multiplied by the number of percentage points by which sales increase in the current year when compared to the prior year. Corporation X discloses to its shareholders prior to the vote both the class of executives eligible to receive awards and the annual formula of $100,000 multiplied by the percentage increase in sales. This disclosure meets the requirements of this paragraph (e)(4). Because the compensation committee does not have the authority to establish a different target under the plan, Corporation X need not redisclose to its shareholders and obtain their reapproval of the material terms of the plan until those material terms are changed.

Example 2. The facts are the same as in *Example 1* except that Corporation X discloses only that bonuses will be paid on the basis of the annual increase in sales. This disclosure does not meet the requirements of this paragraph (e)(4) because it does not include the formula for calculating the compensation or a maximum amount of compensation to be paid if the performance goal is satisfied.

Example 3. Corporation Y adopts an incentive compensation plan in 1995 that will pay a specified class of its executives a bonus every 3 years based on the following 3 factors: increases in earnings per share, reduction in costs for specified divisions, and increases in sales by specified divisions. The bonus is payable in cash or in Corporation Y stock, at the option of the executive. Under the terms of the plan, prior to the beginning of each 3-year period, the compensation committee determines the specific targets under each of the three factors (i.e., the amount of the increase in earnings per share, the reduction in costs, and the amount of sales) that must be met in order for the executives to receive a bonus. Under the terms of the plan, the compensation committee retains the discretion to determine whether a bonus will be paid under any one of the goals. The terms of the plan also specify that no executive may receive a bonus in excess of $1,500,000 for any 3-year period. To satisfy the requirements of this paragraph (e)(4), Corporation Y obtains shareholder approval of the plan at its 1995 annual shareholder meeting. In the proxy statement issued to shareholders, Corporation Y need not disclose to shareholders the specific targets that are set by the compensation committee. However, Corporation Y must disclose that bonuses are paid on the basis of earnings per share, reductions in costs, and increases in sales of specified divisions. Corporation Y also must disclose the maximum amount of compensation that any executive may receive under the plan is $1,500,000 per 3-year period. Unless changes in the material terms of the plan are made earlier, Corporation Y need not disclose the material terms of the plan to the shareholders and obtain their reapproval until the first shareholders' meeting held in 2000.

Example 4. The same facts as in *Example 3,* except that prior to the beginning of the second 3-year period, the compensation committee determines that different targets will be set under the plan for that period with regard to all three of the performance criteria (i.e., earnings per share, reductions in costs, and increases in sales). In addition, the compensation committee raises the maximum dollar amount that can be paid under the plan for a 3-year period to $2,000,000. The increase in the maximum dollar amount of compensation under the plan is a changed material term. Thus, to satisfy the requirements of this paragraph (e)(4), Corporation Y must disclose to and obtain approval by the shareholders of the plan as amended.

Example 5. In 1998, Corporation Z establishes a plan under which a specified group of executives will receive a cash bonus not to exceed $750,000 each if a new product that has been in development is completed and ready for sale to customers by January 1, 2000. Although the completion of the new product is a material term of the performance goal under this paragraph (e)(4), the compensation committee determines that the disclosure to shareholders of the performance goal would adversely affect Corporation Z because its competitors would be made aware of the existence and timing of its new product. In this case, the requirements of this paragraph (e)(4) are satisfied if all other material terms, including the maximum amount of compensation, are disclosed and the disclosure affirmatively states that the terms of the performance goal are not being disclosed because the compensation committee has determined that those terms include confidential information, the disclosure of which would adversely affect Corporation Z.

(5) *Compensation committee certification.* The compensation committee must certify in writing prior to payment of the compensation that the performance goals and any other material terms were in fact satisfied. For this purpose, approved minutes of the compensation committee meeting in which the certification is made are treated as a written certification. Certification by the compensation committee is not required for compensation that is attributable solely to the increase in the stock of the publicly held corporation.

(f) *Companies that become publicly held, spinoffs, and similar transactions*—(1) *In general.* In the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit of paragraph (b) of this section does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such a corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect. In accordance with paragraph (c)(1)(ii) of this section, a corporation that is a member of an affiliated group that includes a publicly held corporation is considered publicly held and, therefore, cannot rely on this paragraph (f)(1).

(2) *Reliance period.* Paragraph (f)(1) of this section may be relied upon until the earliest of—

(i) The expiration of the plan or agreement;

(ii) The material modification of the plan or agreement, within the meaning of paragraph (h)(1)(iii) of this section;

(iii) The issuance of all employer stock and other compensation that has been allocated under the plan; or

(iv) The first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the initial public offering

occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held.

(3) *Stock-based compensation.* Paragraph (f)(1) of this section will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(1) of this section if the grant occurs on or before the earliest of the events specified in paragraph (f)(2) of this section.

(4) *Subsidiaries that become separate publicly held corporations*—(i) *In general.* If a subsidiary that is a member of the affiliated group described in paragraph (c)(1)(ii) of this section becomes a separate publicly held corporation (whether by spinoff or otherwise), any remuneration paid to covered employees of the new publicly held corporation will satisfy the exception for performance-based compensation described in paragraph (e) of this section if the conditions in either paragraph (f)(4)(ii) or (f)(4)(iii) of this section are satisfied.

(ii) *Prior establishment and approval.* Remuneration satisfies the requirements of this paragraph (f)(4)(ii) if the remuneration satisfies the requirements for performance-based compensation set forth in paragraphs (e)(2), (e)(3), and (e)(4) of this section (by application of paragraphs (e)(3)(viii) and (e)(4)(viii) of this section) before the corporation becomes a separate publicly held corporation, and the certification required by paragraph (e)(5) of this section is made by the compensation committee of the new publicly held corporation (but if the performance goals are attained before the corporation becomes a separate publicly held corporation, the certification may be made by the compensation committee referred to in paragraph (e)(3)(viii) of this section before it becomes a separate publicly held corporation). Thus, this paragraph (f)(4)(ii) requires that the outside directors and shareholders (within the meaning of paragraphs (e)(3)(viii) and (e)(4)(viii) of this section) of the corporation before it becomes a separate publicly held corporation establish and approve, respectively, the performance-based compensation for the covered employees of the new publicly held corporation in accordance with paragraphs (e)(3) and (e)(4) of this section.

(iii) *Transition period.* Remuneration satisfies the requirements of this paragraph (f)(4)(iii) if the remuneration satisfies all of the requirements of paragraphs (e)(2), (e)(3), and (e)(5) of this section. The outside directors (within the meaning of paragraph (e)(3)(viii) of this section) of the corporation before it becomes a separate publicly held corporation, or the outside directors of the new publicly held corporation, may establish and administer the performance goals for the covered employees of the new publicly held corporation for purposes of satisfying the requirements of paragraphs (e)(2) and (e)(3) of this section. The certification required by paragraph (e)(5) of this section must be made by the compensation committee of the new publicly held corporation. However, a taxpayer may rely on this paragraph (f)(4)(iii) to satisfy the requirements of paragraph (e) of this section only for compensation paid, or stock options, stock appreciation rights, or restricted property granted, prior to the first regularly scheduled meeting of the shareholders of the new publicly held corporation that occurs more than 12 months after the date the corporation becomes a separate publicly held corporation. Compensation paid, or stock options, stock appreciation rights, or restricted property granted, on or after the date of that meeting of shareholders must satisfy all requirements of paragraph (e) of this section, including the shareholder approval requirement of paragraph (e)(4) of this section, in order to satisfy the requirements for performance-based compensation.

(5) *Example.* The following example illustrates the application of paragraph (f)(4)(ii) of this section:

Example. Corporation P, which is publicly held, decides to spin off Corporation S, a wholly owned subsidiary of Corporation P. After the spinoff, Corporation S will be a separate publicly held corporation. Before the spinoff, the compensation committee of Corporation P, pursuant to paragraph (e)(3)(viii) of this section, establishes a bonus plan for the executives of Corporation S that provides for bonuses payable after the spinoff and that satisfies the requirements of paragraph (e)(2) of this section. If, pursuant to paragraph (e)(4)(viii) of this section, the shareholders of Corporation P approve the plan prior to the spinoff, that approval will satisfy the requirements of paragraph (e)(4) of this section with respect to compensation paid pursuant to the bonus plan after the spinoff. However, the compensation committee of Corporation S will be required to certify that the goals are satisfied prior to the payment of the bonuses in order for the bonuses to be considered performance-based compensation.

(g) *Coordination with disallowed excess parachute payments.* The $1,000,000 limitation in paragraph (b) of this section is reduced (but not below zero) by the amount (if any) that would have been included in the compensation of the covered employee for the taxable year but for being disallowed by reason of section 280G. For example, assume that during a taxable year a corporation pays $1,500,000 to a covered employee and no portion satisfies the exception in paragraph (d) of this section for commissions or paragraph (e) of this section for qualified performance-based compensation. Of the $1,500,000, $600,000 is an excess parachute payment, as defined in section 280G(b)(1) and is disallowed by reason of that section. Because the excess parachute payment reduces the limitation of paragraph (b) of this section, the corporation can deduct $400,000, and $500,000 of the otherwise deductible amount is nondeductible by reason of section 162(m).

(h) *Transition rules*—(1) *Compensation payable under a written binding contract which was in effect on February 17, 1993*—(i) *General rule.* The deduction limit of paragraph (b) of this section does not apply to any compensation payable under a written binding contract that was in effect on February 17, 1993. The preceding sentence does not apply unless, under applicable state law, the corporation is obligated to pay the compensation if the employee performs services. However, the deduction limit of paragraph (b) of this section does apply to a contract that is renewed after February 17, 1993. A written binding contract that is terminable or cancelable by the corporation after February 17, 1993, without the employee's consent is treated as a new contract as of the date that any such termination or cancellation, if made, would be effective. Thus, for example, if the terms of a contract provide that it will be automatically renewed as of a certain date unless either the corporation or the employee gives notice of termination of the contract at least 30 days before that date, the contract is treated as a new contract as of the date that termination would be effective if that notice were given. Similarly, for example, if the terms of a contract provide that the contract will be terminated or canceled as of a certain date unless either the corporation or the employee elects to renew within 30 days of that date, the contract is treated as renewed by the corporation as of that date. Alternatively, if the corporation will remain legally obligated by the terms of a contract beyond a certain date at the sole discretion of the employee, the

contract will not be treated as a new contract as of that date if the employee exercises the discretion to keep the corporation bound to the contract. A contract is not treated as terminable or cancelable if it can be terminated or canceled only by terminating the employment relationship of the employee.

(ii) *Compensation payable under a plan or arrangement.* If a compensation plan or arrangement meets the requirements of paragraph (h)(1)(i) of this section, the compensation paid to an employee pursuant to the plan or arrangement will not be subject to the deduction limit of paragraph (b) of this section even though the employee was not eligible to participate in the plan as of February 17, 1993. However, the preceding sentence does not apply unless the employee was employed on February 17, 1993, by the corporation that maintained the plan or arrangement, or the employee had the right to participate in the plan or arrangement under a written binding contract as of that date.

(iii) *Material modifications.*

(A) Paragraph (h)(1)(i) of this section will not apply to any written binding contract that is materially modified. A material modification occurs when the contract is amended to increase the amount of compensation payable to the employee. If a binding written contract is materially modified, it is treated as a new contract entered into as of the date of the material modification. Thus, amounts received by an employee under the contract prior to a material modification are not affected, but amounts received subsequent to the material modification are not treated as paid under a binding, written contract described in paragraph (h)(1)(i) of this section.

(B) A modification of the contract that accelerates the payment of compensation will be treated as a material modification unless the amount of compensation paid is discounted to reasonably reflect the time value of money. If the contract is modified to defer the payment of compensation, any compensation paid in excess of the amount that was originally payable to the employee under the contract will not be treated as a material modification if the additional amount is based on either a reasonable rate of interest or one or more predetermined actual investments (whether or not assets associated with the amount originally owed are actually invested therein) such that the amount payable by the employer at the later date will be based on the actual rate of return of the specific investment (including any decrease as well as any increase in the value of the investment).

(C) The adoption of a supplemental contract or agreement that provides for increased compensation, or the payment of additional compensation, is a material modification of a binding, written contract where the facts and circumstances show that the additional compensation is paid on the basis of substantially the same elements or conditions as the compensation that is otherwise paid under the written binding contract. However, a material modification of a written binding contract does not include a supplemental payment that is equal to or less than a reasonable cost-of-living increase over the payment made in the preceding year under that written binding contract. In addition, a supplemental payment of compensation that satisfies the requirements of qualified performance-based compensation in paragraph (e) of this section will not be treated as a material modification.

(iv) Examples. The following examples illustrate the exception of this paragraph (h)(1):

Example 1. Corporation X executed a 3-year compensation arrangement with C on February 15, 1993, that constitutes a written binding contract under applicable state law. The terms of the arrangement provide for automatic extension after the 3-year term for additional 1-year periods, unless the corporation exercises its option to terminate the arrangement within 30 days of the end of the 3-year term or, thereafter, within 30 days before each anniversary date. Termination of the compensation arrangement does not require the termination of C's employment relationship with Corporation X. Unless terminated, the arrangement is treated as renewed on February 15, 1996, and the deduction limit of paragraph (b) of this section applies to payments under the arrangement after that date.

Example 2. Corporation Y executed a 5-year employment agreement with B on January 1, 1992, providing for a salary of $900,000 per year. Assume that this agreement constitutes a written binding contract under applicable state law. In 1992 and 1993, B receives the salary of $900,000 per year. In 1994, Corporation Y increases B's salary with a payment of $20,000. The $20,000 supplemental payment does not constitute a material modification of the written binding contract because the $20,000 payment is less than or equal to a reasonable cost-of-living increase from 1993. However, the $20,000 supplemental payment is subject to the limitation in paragraph (b) of this section. On January 1, 1995, Corporation Y increases B's salary to $1,200,000. The $280,000 supplemental payment is a material modification of the written binding contract because the additional compensation is paid on the basis of substantially the same elements or conditions as the compensation that is otherwise paid under the written binding contract and it is greater than a reasonable, annual cost-of-living increase. Because the written binding contract is materially modified as of January 1, 1995, all compensation paid to B in 1995 and thereafter is subject to the deduction limitation of section 162(m).

Example 3. Assume the same facts as in *Example 2,* except that instead of an increase in salary, B receives a restricted stock grant subject to B's continued employment for the balance of the contract. The restricted stock grant is not a material modification of the binding written contract because any additional compensation paid to B under the grant is not paid on the basis of substantially the same elements and conditions as B's salary because it is based both on the stock price and B's continued service. However, compensation attributable to the restricted stock grant is subject to the deduction limitation of section 162(m).

(2) *Special transition rule for outside directors.* A director who is a disinterested director is treated as satisfying the requirements of an outside director under paragraph (e)(3) of this section until the first meeting of shareholders at which directors are to be elected that occurs on or after January 1, 1996. For purposes of this paragraph (h)(2) and paragraph (h)(3) of this section, a director is a disinterested director if the director is disinterested within the meaning of Rule 16b–3(c)(2)(i), 17 CFR 240.16b–3(c)(2)(i), under the Exchange Act (including the provisions of Rule 16b–3(d)(3), as in effect on April 30, 1991).

(3) *Special transition rule for previously-approved plans—(i) In general.* Any compensation paid under a plan or agreement approved by shareholders before December 20, 1993, is treated as satisfying the requirements of paragraphs (e)(3) and (e)(4) of this section, provided that the directors administering the plan or agreement are disinterested directors and the plan was approved by shareholders in a manner consistent with Rule 16b–3(b), 17 CFR 240.16b–3(b), under the Exchange Act or Rule 16b–3(a), 17 CFR 240.16b–3(a) (as contained in 17 CFR part 240 revised April 1, 1990). In addition, for purposes of satisfying the requirements of paragraph (e)(2)(vi) of this section, a plan or agreement is treated as stating a maximum number of shares with respect to which an option or right may be granted to any employee if the plan or agreement that was approved by the shareholders provided for an aggregate limit, consistent with Rule 16b–3(b), 17 CFR 250.16b–3(b), on the shares of employer stock with respect to which awards may be made under the plan or agreement.

(ii) *Reliance period.* The transition rule provided in this paragraph (h)(3)

shall continue and may be relied upon until the earliest of—

(A) The expiration or material modification of the plan or agreement;

(B) The issuance of all employer stock and other compensation that has been allocated under the plan; or

(C) The first meeting of shareholders at which directors are to be elected that occurs after December 31, 1996.

(iii) *Stock-based compensation.* This paragraph (h)(3) will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (h)(3)(i) of this section if the grant occurs on or before the earliest of the events specified in paragraph (h)(3)(ii) of this section.

(iv) *Example.* The following example illustrates the application of this paragraph (h)(3):

Example. Corporation Z adopted a stock option plan in 1991. Pursuant to Rule 16b–3 under the Exchange Act, the stock option plan has been administered by disinterested directors and was approved by Corporation Z shareholders. Under the terms of the plan, shareholder approval is not required again until 2001. In addition, the terms of the stock option plan include an aggregate limit on the number of shares available under the plan. Option grants under the Corporation Z plan are made with an exercise price equal to or greater than the fair market value of Corporation Z stock. Compensation attributable to the exercise of options that are granted under the plan before the earliest of the dates specified in paragraph (h)(3)(ii) of this section will be treated as satisfying the requirements of paragraph (e) of this section for qualified performance-based compensation, regardless of when the options are exercised.

(i) (*Reserved*)

(j) *Effective date*—(1) *In general.* Section 162(m) and this section apply to compensation that is otherwise deductible by the corporation in a taxable year beginning on or after January 1, 1994.

(2) *Delayed effective date for certain provisions—(i) Date on which remuneration is considered paid.* Notwithstanding paragraph (j)(1) of this section, the rules in the second sentence of each of paragraphs (e)(3)(ii)(A), (e)(3)(ii)(B), and (e)(3)(ii)(C) of this section for determining the date or dates on which remuneration is considered paid to a director are effective for taxable years beginning on or after January 1, 1995. Prior to those taxable years, taxpayers must follow the rules in paragraphs (e)(3)(ii)(A), (e)(3)(ii)(B), and (e)(3)(ii)(C) of this section or another reasonable, good faith interpretation of section 162(m) with respect to the date or dates on which remuneration is considered paid to a director.

(ii) *Separate treatment of publicly held subsidiaries.* Notwithstanding paragraph (j)(1) of this section, the rule in paragraph (c)(1)(ii) of this section that treats publicly held subsidiaries as separately subject to section 162(m) is effective as of the first regularly scheduled meeting of the shareholders of the publicly held subsidiary that occurs more than 12 months after December 2, 1994. The rule for stock-based compensation set forth in paragraph (f)(3) of this section will apply for this purpose, except that the grant must occur before the shareholder meeting specified in this paragraph (j)(2)(ii). Taxpayers may choose to rely on the rule referred to in the first sentence of this paragraph (j)(2)(ii) for the period prior to the effective date of the rule.

(iii) *Subsidiaries that become separate publicly held corporations.* Notwithstanding paragraph (j)(1) of this section, if a subsidiary of a publicly held corporation becomes a separate publicly held corporation as described in paragraph (f)(4)(i) of this section, then, for the duration of the reliance period described in paragraph (f)(2) of this section, the rules of paragraph (f)(1) of this section are treated as applying (and the rules of paragraph (f)(4) of this section do not apply) to remuneration paid to covered employees of that new publicly held corporation pursuant to a plan or agreement that existed prior to December 2, 1994, provided that the treatment of that remuneration as performance-based is in accordance with a reasonable, good faith interpretation of section 162(m). However, if remuneration is paid to covered employees of that new publicly held corporation pursuant to a plan or agreement that existed prior to December 2, 1994, but that remuneration is not performance-based under a reasonable, good faith interpretation of section 162(m), the rules of paragraph (f)(1) of this section will be treated as applying only until the first regularly scheduled meeting of shareholders that occurs more than 12 months after December 2, 1994. The rules of paragraph (f)(4) of this section will apply as of that first regularly scheduled meeting. The rule for stock-based compensation set forth in paragraph (f)(3) of this section will apply for purposes of this paragraph (j)(2)(iii), except that the grant must occur before the shareholder meeting specified in the preceding sentence if the remuneration is not performance-based under a reasonable, good faith interpretation of section 162(m). Taxpayers may choose to rely on the rules of paragraph (f)(4) of this section for the period prior to the applicable effective date referred to in the first or second sentence of this paragraph (j)(2)(iii).

(iv) *Bonus pools.* Notwithstanding paragraph (j)(1) of this section, the rules in paragraph (e)(2)(iii)(A) that limit the sum of individual percentages of a bonus pool to 100 percent will not apply to remuneration paid before January 1, 2001, based on performance in any performance period that began prior to December 20, 1995.

(v) *Compensation based on a percentage of salary or base pay.* Notwithstanding paragraph (j)(1) of this section, the requirement in paragraph (e)(4)(i) of this section that, in the case of certain formulas based on a percentage of salary or base pay, a corporation disclose to shareholders the maximum dollar amount of compensation that could be paid to the employee, will apply only to plans approved by shareholders after April 30, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry ''1.162–27. . . . 1545–1466'' in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30869 Filed 12–19–95; 8:45 am]

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26 CFR Part 1

[TD 8635]

RIN 1545–AS92

Nonbank Trustee Net Worth Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or

remain an approved nonbank trustee. These regulations affect nonbank trustees and custodians of individual retirement accounts, and nonbank custodians of qualified plans and tax-sheltered annuities.

EFFECTIVE DATE: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, temporary regulations (TD 8570) under section 401 were published in the Federal Register (59 FR 62570). A notice of proposed rulemaking (EE–38–94), cross-referencing the temporary regulations, was published in the Federal Register (59 FR 62644) on the same day. The temporary regulations provide guidance on the adequacy of net worth requirements for nonbank trustees and custodians of individual retirement plans, and for nonbank custodians of custodial accounts of qualified plans and tax-sheltered annuities.

After consideration of all of the comments, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision. Because section 401(d)(1), under which § 1.401–12 was originally issued, was repealed by section 237(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (1982), these final regulations also move all the rules for nonbank trustees and custodians that were previously in § 1.401–12(n) to § 1.408–2.

Explanation of Provisions

The fiduciary conduct rules for nonbank trustees and custodians under longstanding Treasury regulations require nonbank trustees and custodians to maintain a minimum amount of net worth in order to qualify as an approved nonbank trustee or custodian. Under this requirement, the nonbank trustee or custodian's net worth must exceed the greater of a specified dollar amount or a percentage of the value of all assets held in fiduciary accounts of retirement plans. A primary objective of this adequacy-of-net-worth requirement has been to ensure that nonbank trustees and custodians maintain a level of solvency commensurate with their financial and fiduciary responsibilities.

Under the general net worth requirement, nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of $100,000 or four percent of the value of all assets held in fiduciary accounts. Additionally, nonbank trustees and custodians must take whatever steps are necessary (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or two percent of the value of all assets held by them in fiduciary accounts.

For passive nonbank trustees and custodians (qualified nonbank entities that have no discretion to direct the investment of assets), the percentage requirements are lower. Specifically, passive nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of $100,000 or two percent of the value of all assets held in fiduciary accounts. Additionally, they must take appropriate action (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or one percent of the value of assets held in their fiduciary accounts.

The proposed and temporary regulations provide a special rule for passive nonbank trustees and custodians that are broker-dealers and members of the Securities Investor Protection Corporation (SIPC). The proposed and temporary regulations provide that, to the extent that assets held in any fiduciary accounts are insured by SIPC in the event of the member's liquidation ($500,000 per account, $100,000 of which may be cash), the assets will be disregarded in determining the value of assets held in fiduciary accounts by the trustee or custodian for purposes of the percentage part of the net worth requirement.

The final regulations adopt the provisions of the proposed and temporary regulations. In addition, in response to comments, the final regulations extend the SIPC-related relief to all nonbank trustees and custodians that are broker-dealers and members of SIPC rather than limiting the relief to passive nonbank trustees and custodians. The final regulations provide that the amount of the minimum net worth requirement for nonbank trustees and custodians that are SIPC members is reduced by either two percent of assets insured by SIPC (in the case of the minimum net worth requirement that applies to a trustee or custodian accepting additional accounts) or one percent of assets insured by SIPC (in the case of the minimum net worth requirement that must be satisfied to avoid a mandatory relinquishment of accounts). An example in the regulations illustrates this rule.

The final regulations also retain the rule in the proposed and temporary regulations that increased the initial net worth requirement for all nonbank trustees and custodians. The purpose of the rule is to better assure that the enterprises are sound and well-funded during their start-up period. This initial net worth requirement requires all new entities applying for nonbank trustee or custodian status to have a net worth of not less than $250,000 for the most recent taxable year preceding the applicant's initial application.

This new initial net worth requirement applies only to applications received after January 5, 1995. Previously approved nonbank trustees and custodians need only satisfy the ongoing net worth requirement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations) IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

§ 1.401–12 also issued under 26 U.S.C. 401(d)(1). * * *

§§ 1.401–12 and 1.408–2 [Amended]

Par. 2. Paragraph (n) of § 1.401–12 is redesignated as paragraph (e) of § 1.408–2 and the authority citation immediately following § 1.401–12 is removed.

§ 1.401–12T [Removed]

Par. 3. Section 1.401–12T is removed.

§ 1.401(f)–1 [Amended]

Par. 4. Section 1.401(f)–1 is amended by:

1. Removing the language ''section 401(d)(1) and the regulations thereunder'' and adding ''§ 1.408–2(e)'' in its place in the last sentence of paragraph (b)(1)(ii).

2. Removing the language ''401(d)(1) and adding ''408(n)'' in its place in paragraph (d)(1).

Par. 5. Section 1.408–2 is amended by:

1. Removing the language ''401(d)(1)'' and adding ''408(n)'' in its place in paragraph (b)(2)(i).

2. Removing the language ''(b)(2)(ii)'' and adding ''(e)'' in its place in paragraph (b)(2)(i).

3. Removing paragraph (b)(2)(ii).

4. Redesignating (b)(2)(iii) as (b)(2)(ii).

5. Removing newly designated paragraphs (e)(1) and (e)(9).

6. Further redesignating paragraphs (e)(2) through (e)(8) as paragraphs (e)(1) through (e)(7), respectively.

7. Removing the language ''For the plan years to which this paragraph applies, the'' and adding ''The'' in its place, and removing the language ''(c)(1)(i)'' and adding ''(b)'' in its place, in the first sentence of newly designated paragraph (e)(1).

8. Removing the language ''401'' and adding ''408'' in its place, and removing the language ''(n)(3) to (n)(7)'' and adding ''(e)(2) to (e)(6)'' in its place, in the second sentence of newly designated paragraph (e)(1).

9. Removing the language ''Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224'' and adding ''the address prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter)'' in its place in the third sentence of newly designated paragraph (e)(1), in the last sentence of newly designated (e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)(v)(B).

10. Removing the language ''(n)(8)'' and adding ''(e)(7)'' in its place in the last sentence of newly designated paragraph (e)(1).

11. Removing the language ''(n)(6)'' and adding ''(e)(5)'' in its place in newly designated paragraph (e)(2)(iv).

12. Redesignating newly designated paragraph (e)(5)(ii)(A) as paragraph (e)(5)(ii)(E).

13. Removing the language ''(n)(7)(i)(A)'' and adding ''(e)(6)(i)(A)'' in its place in newly designated paragraph (e)(5)(ii)(B)(*2*) and in newly designated paragraph (e)(5)(ii)(C)(*2*).

14. Removing the language ''(n)(6)(iii)(A)'' and adding ''(e)(5)(iii)(A)'' in its place in newly designated paragraph (e)(5)(iii)(B).

15. Removing the language ''(n)(6)(vi)'' and adding ''(e)(5)(vi)'' in its place in newly designated paragraph (e)(5)(v)(A).

16. Removing the language ''(n)(6)(viii)(C)'' and adding ''(e)(5)(viii)(C)'' in its place in newly designated paragraph (e)(5)(vi).

17. Removing the language ''(n)(3)(v)'' and adding ''(e)(2)(v)'' in its place, and removing the language ''(n)(8)'' and adding ''(e)(7)'' in its place, in newly designated paragraph (e)(5)(viii).

18. Removing the language ''(n)(6)(i)(A)(3)'' and adding ''(e)(5)(i)(A)(3)'' in its place, and removing the language ''(n)(5)(ii)(E)'' and adding ''(e)(4)(ii)(E)'' in its place, in the third sentence of newly designated paragraph (e)(6)(i)(A).

19. Removing the language ''(n)(7)(iii)(A)(*3*)'' and adding ''(e)(6)(iii)(A)(*3*)'' in its place in newly designated paragraph (e)(6)(iii)(C).

20. Revising newly designated paragraph (e)(5)(ii)(A) and adding paragraph (e)(5)(ii)(D).

21. The revision and addition read as follows:

§ 1.408–2 Individual retirement accounts.

* * * * *

(e) * * *

* * * * *

(5) * * *

(ii) *Adequacy of net worth*—(A) *Initial net worth requirement.* In the case of applications received after January 5, 1995, no initial application will be accepted by the Commissioner unless the applicant has a net worth of not less than $250,000 (determined as of the end of the most recent taxable year). Thereafter, the applicant must satisfy the adequacy of net worth requirements of paragraph (e)(6)(ii) (B) and (C) of this section.

* * * * *

(D) *Assets held by members of SIPC*—(*1*) For purposes of satisfying the adequacy-of-net-worth requirement of this paragraph, a special rule is provided for nonbank trustees that are members of the Securities Investor Protection Corporation (SIPC) created under the Securities Investor Protection Act of 1970 (SIPA)(15 U.S.C. 78aaa et seq., as amended). The amount that the net worth of a nonbank trustee that is a member of SIPC must exceed is reduced by two percent for purposes of paragraph (e)(5)(ii)(B)(2), and one percent for purposes of paragraph (e)(5)(ii)(C)(2), of the value of assets (determined on an account-by-account basis) held for the benefit of customers (as defined in 15 U.S.C. 78fff–2(e)(4)) in fiduciary accounts by the nonbank trustee to the extent of the portion of each account that does not exceed the dollar limit on advances described in 15 U.S.C. 78fff–3(a), as amended, that would apply to the assets in that account in the event of a liquidation proceeding under the SIPA.

(*2*) The provisions of this special rule for assets held in fiduciary accounts by members of SIPC are illustrated in the following example.

Example—(a) Trustee X is a broker-dealer and is a member of the Securities Investment Protection Corporation. Trustee X also has been approved as a nonbank trustee for individual retirement accounts (IRAs) by the Commissioner but not as a passive nonbank trustee. Trustee X is the trustee for four IRAs. The total assets of each IRA (for which Trustee X is the trustee) as of the most recent valuation date before the last day of Trustee X's taxable year ending in 1995 are as follows: the total assets for IRA–1 is $3,000,000 (all of which is invested in securities); the value of the total assets for IRA–2 is $500,000 ($200,000 of which is cash and $300,000 of which is invested in securities), the value of the total assets for IRA–3 is $400,000 (all of which is invested in securities); and the value of the total assets of IRA–4 is $200,000 (all of which is cash). The value of all assets held in fiduciary accounts, as defined in § 1.408–2(e)(6)(viii)(A), is $4,100,000.

(b) The dollar limit on advances described in 15 U.S.C. § 78fff–3(a) that would apply to the assets in each account in the event of a liquidation proceeding under the Securities Investor Protection Act of 1970 in effect as of the last day of Trustee X's taxable year ending in 1995 is $500,000 per account (no more than $100,000 of which is permitted to be cash). Thus, the dollar limit that would apply to IRA–1 is $500,000; the dollar limit for IRA–2 is $400,000 ($100,000 of the cash and the $300,000 of the value of the securities); the dollar limit for IRA–3 is $400,000 (the full value of the account because the value of the account is less than $500,000 and no portion of the account is cash); and the dollar limit for IRA–4 is $100,000 (the entire account is cash and the dollar limit per account for cash is $100,000). The aggregate dollar limits of the four IRAs is $1,400,000.

(c) For 1996, the amount determined under § 1.408–2(e)(6)(ii)(B) is determined as follows for Trustee X: (1) four percent of $4,100,000 equals $164,000; (2) two percent of $1,400,000 equals $28,000; and (3) $164,000 minus $28,000 equals $136,000. Thus,

because $136,000 exceeds $100,000, the minimum net worth necessary for Trustee X to accept new accounts for 1996 is $136,000.

(d) For 1996, the amount determined under § 1.408–2(e)(6)(ii)(C) for Trustee X is determined as follows: (1) two percent of $4,100,000 equals $82,000; (2) one percent of $1,400,000 equals $14,000; and (3) $82,000 minus $14,000 equals $68,000. Thus, because $68,000 exceeds $50,000, the minimum net worth necessary for Trustee X to avoid a mandatory relinquishment of accounts for 1996 is $68,000.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30684 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[TD 8640]

RIN 1545–AI52

Exempt Organizations Not Required To File Annual Returns: Integrated Auxiliaries of Churches

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that exempt certain integrated auxiliaries of churches from filing information returns. These regulations incorporate the rules of Rev. Proc. 86–23 (1986–1 C.B. 564), into the regulations defining integrated auxiliary for purposes of determining what entities must file information returns. The new definition focuses on the sources of an organization's financial support in addition to the nature of the organization's activities.

DATES: These regulations are effective December 20, 1995.

For dates of applicability of these regulations, see § 1.6033–2(h)(6).

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura, of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1994 proposed regulations §§ 1.6033–2 and 1.508–1 [EE–41–86 (1995–2 I.R.B. 20)] under sections 6033(a)(2) and 508 of the Internal Revenue Code of 1986, respectively, were published in the Federal Register (59 FR 64633). The proposed regulations adopted the rules of Rev. Proc. 86–23 (1986–1, C.B. 564) as the definition of integrated auxiliary of a church replacing the current definition set forth in § 1.6033–2(g)(5). Additionally, section 508(c) excepts integrated auxiliaries of a church from the requirement that new organizations notify the Secretary of the Treasury that they are applying for recognition of section 501(c)(3) status (Form 1023). For consistency, § 1.508–1(a)(3)(i)(*a*), which gives several examples of integrated auxiliaries, was proposed to be amended by deleting the examples and by adding a cross-reference to § 1.6033–2(h) for the definition of integrated auxiliary of a church. After IRS and Treasury consideration of the public comments received regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 6033(a)(1) requires organizations that are exempt from income tax under section 501(a) to file annual returns. Section 6033(a)(2)(A) provides exceptions to this requirement for certain specified types of organizations, including, among others, churches, their integrated auxiliaries, and conventions or associations of churches. Section 6033(a)(2)(B) provides that the Secretary may relieve any organization from the filing requirement where the Secretary determines that filing is not necessary to the efficient administration of the internal revenue laws.

Prior to this Treasury decision, § 1.6033–2(g)(5)(i) defined the term integrated auxiliary of a church as an organization that is: (1) exempt from taxation as an organization described in section 501(c)(3); (2) affiliated with a church (within the meaning of § 1.6033–2(g)(5)(iii)); and (3) engaged in a principal activity that is ''exclusively religious.'' Section 1.6033–2(g)(5)(ii) provides that an organization's principal activity is not ''exclusively religious'' if that activity is educational, literary, charitable, or of another nature (other than religious) that would serve as a basis for exemption under section 501(c)(3).

The ''exclusively religious'' element of the definition was litigated in *Lutheran Social Service of Minnesota* v. *United States*, 583 F. Supp. 1298 (D. Minn. 1984), *rev'd* 758 F.2d 1283 (8th Cir. 1985), and *Tennessee Baptist Children's Homes, Inc.* v. *United States*, 604 F. Supp. 210 (M.D. Tenn. 1984) *aff'd*, 790 F.2d 534 (6th Cir. 1986). While the litigation over the ''exclusively religious'' standard was proceeding, Congress enacted section 3121(w) of the Internal Revenue Code, Tax Reform Act of 1984, Pub. L. 98–369, section 2603(b), 98 Stat. 494, 1128 (1984), which permits certain church-related organizations to elect out of social security coverage if they meet a standard based on the degree of financial support they receive from a church. In light of this litigation and the enactment of section 3121(w), IRS personnel met with representatives of various church organizations to encourage voluntary compliance with the filing requirements and to develop a less controversial and more objective standard for identifying an integrated auxiliary of a church.

Subsequent to these meetings the IRS published Rev. Proc. 86–23, which provides that, for tax years beginning after December 31, 1975, an organization is not required to file Form 990 if it is: (1) described in sections 501(c)(3) and 509(a) (1), (2), or (3); (2) affiliated with a church or a convention or association of churches; and (3) internally supported. With respect to this last criterion, Rev. Proc. 86–23 sets forth an internal support standard that is similar to the financial support standard in section 3121(w).

The proposed regulations adopted the rules of Rev. Proc. 86–23 as the definition of the term integrated auxiliary of a church replacing the current definition set forth in § 1.6033–2(g)(5). The final regulations retain the definition of an integrated auxiliary of a church that is contained in the proposed regulations.

Under this Treasury decision, to be an integrated auxiliary of a church an organization must first be described in section 501(c)(3) and section 509(a) (1), (2), or (3), and be affiliated with a church in accordance with standards set forth in the regulations. An organization meeting those tests is an integrated auxiliary if it either: (1) does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public; or (2) offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public and not more than 50 percent of its support comes from a combination of government sources, public solicitation of contributions, and receipts other than those from an unrelated trade or business.

Some commentators have noted that certain church-related organizations that finance, fund and manage pension programs were originally excused from filing by Notice 84–2 (1984–1 C.B. 331), which was issued pursuant to the Commissioner's discretionary authority

under section 6033(a)(2)(B). Rev. Proc. 86–23 states that Notice 84–2 is superseded by Rev. Proc. 86–23 because the organizations excused from filing under the notice are excused from filing by the revenue procedure. The commentators have expressed concern that the proposed regulations did not relieve church pension plans described in Notice 84–2 from the filing requirement. The organizations excused from filing under Notice 84–2 do not necessarily meet the definition of an integrated auxiliary of a church under these final regulations. Nevertheless, the proposed regulations were not intended to alter the exemption from filing provided in Notice 84–2 and reaffirmed in Rev. Proc. 86–23. To make this intent clear, the IRS is issuing Revenue Procedure 96–10 at the same time that it issues these final regulations. Rev. Proc. 96–10 carries over the exemption from filing for church pension plan organizations that was set forth in Notice 84–2. Having reaffirmed those parts of Rev. Proc. 86–23 that were not incorporated into these final regulations, Rev. Proc. 96–10 also obsoletes Rev. Proc. 86–23.

The IRS developed the internal support test contained in the proposed regulations based on its conclusion that Congress intended that organizations receiving a majority of their support from public and government sources, as opposed to those receiving a majority of their support from church sources, should file annual information returns in order that the public have a means of inspecting the returns of these organizations. The annual information return also was intended to serve as a means by which the IRS could examine, if necessary, those organizations receiving substantial non-church support.

One commentator has suggested that the definition of an integrated auxiliary of a church should consist of a church-related structural test rather than an internal support test. The IRS and the Treasury Department believe that the use of a structural test could lead to problems similar to those caused by the ''exclusively religious'' test. Additionally, the suggested definition would frustrate Congress' intended objective of allowing ongoing public scrutiny of organizations receiving the majority of their support from public and government sources.

A commentator has also suggested that by using the internal support test as part of the new definition of an integrated auxiliary of a church, the IRS is attempting to ''overrule'' the holdings in the previously mentioned court cases (i.e. *Tennessee Baptist Children's Home* and *Lutheran Social Service of Minnesota*).

The IRS and the Treasury Department believe that the courts' rulings questioned the validity of the ''exclusively religious'' activity requirement contained in the former regulation on the basis that it is not within the Service's discretion to assess the religious nature of a church's activities. Having eliminated the ''exclusively religious'' activity test from the definition of integrated auxiliary of a church, the IRS and the Treasury Department believe that the definition in the final regulation is consistent with the courts' holdings as well as the statute and the legislative history.

Some commentators have suggested that the first sentence of § 1.6033–2(g)(5)(iv) of the regulations in effect prior to this Treasury decision should be included in the final regulations. That sentence identified specific types of organizations as integrated auxiliaries of churches in accordance with legislative history. Although § 1.6033–2(h) of the proposed regulations was intended to provide a general definition that could apply in all instances, the IRS and the Treasury Department agree that, in order to be consistent with the legislative history, parts of § 1.6033–2(g)(5)(iv) of the regulations should be included in these final regulations. Therefore, these final regulations include § 1.6033–2(h)(5) that states that ''a men's or women's organization, a seminary, a mission society, or a youth group'' is an integrated auxiliary of a church regardless of whether it meets the internal support test in to § 1.6033–2(h)(1)(iii). (The tests under § 1.6033–2(h)(1) (i) and (ii) must still be met.)

Comments were received objecting that *Example 4* relating to seminaries did not describe a realistic set of facts and, therefore, could lead to confusion. Accordingly, *Example 4* has been eliminated. Also, the treatment of seminaries has been clarified by § 1.6033–2(h)(5). We also note that, in addition to the exception for seminaries, § 1.6033–2(g)(1)(vii) of the regulations excepts certain schools below college level that are affiliated with a church or operated by a religious order from the filing requirements of section 6033. Except for a paragraph numbering change contained in a cross-reference, § 1.6033–2(g)(1)(vii) is unchanged by these final regulations.

Several commentators have suggested that expanded definitions of certain terms used in the internal support test be included in this Treasury decision. The final regulations do not incorporate this suggestion. The IRS and the Treasury Department intend for these final regulations to reissue the test published in Rev. Proc. 86–23 as the new definition for an integrated auxiliary of a church. If guidance is necessary on the application of the definition to specific cases, that guidance is more appropriately provided in non-regulatory form, such as through private letter rulings or revenue rulings.

The amendment to § 1.6033–2(g)(5) is effective with respect to returns filed for taxable years beginning after December 31, 1969. However, for returns filed for taxable years beginning after December 31, 1969, but before December 20, 1995, the exclusively religious test contained in § 1.6033–2(g)(5) prior to its amendment by these final regulations may, at the entity's option, be used as an alternative to the financial support test in determining whether an entity is an integrated auxiliary of a church. The remainder of the amendments are effective with respect to returns for taxable years beginning after December 31, 1969. Therefore, for returns filed for taxable years beginning after December 20, 1995, the definition of integrated auxiliary of a church contained in § 1.6033–2(h) will be used in determining whether an entity is an integrated auxiliary of a church.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore,a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.508–1 is amended by revising paragraphs(a)(3)(i) introductory text and (a)(3)(i)(*a*) to read as follows:

§ 1.508–1 Notices.

(a) * * *

(3) * * * (i) Paragraphs (a) (1) and (2) of this section are inapplicable to the following organizations:

(*a*) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church. See § 1.6033–2(h) regarding the definition of integrated auxiliary of a church;

* * * * *

Par. 3. Section 1.6033–2 is amended as follows:

1. Paragraphs (g)(1)(i) and (g)(vii) are revised.

2. Paragraph (g)(5) is removed and reserved.

3. Paragraphs (h) through (j) are redesignated as paragraphs (i) through (k).

4. New paragraph (h) is added.

The added and revised provisions read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

* * * * *

(g) * * *

(1) * * *

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in paragraph (h) of this section);

* * * * *

(vii) An educational organization (below college level) that is described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of paragraph (h)(2) of this section) with a church or operated by a religious order.

* * * * *

(h) *Integrated auxiliary*—(1) *In general.* For purposes of this title, the *term integrated auxiliary of a church* means an organization that is—

(i) Described both in sections 501(c)(3) and 509(a) (1), (2), or (3);

(ii) Affiliated with a church or a convention or association of churches; and

(iii) Internally supported.

(2) *Affiliation.* An organization is affiliated with a church or a convention or association of churches, for purposes of paragraph (h)(1)(ii) of this section, if—

(i) The organization is covered by a group exemption letter issued under applicable administrative procedures, (such as Rev. Proc. 80–27 (1980–1 C.B. 677); See § 601.601(a)(2)(ii)(*b*)), to a church or a convention or association of churches;

(ii) The organization is operated, supervised, or controlled by or in connection with (as defined in § 1.509(a)–4) a church or a convention or association of churches; or

(iii) Relevant facts and circumstances show that it is so affiliated.

(3) *Facts and circumstances.* For purposes of paragraph (h)(2)(iii) of this section, relevant facts and circumstances that indicate an organization is affiliated with a church or a convention or association of churches include the following factors. However, the absence of one or more of the following factors does not necessarily preclude classification of an organization as being affiliated with a church or a convention or association of churches—

(i) The organization's enabling instrument (corporate charter, trust instrument, articles of association, constitution or similar document) or by-laws affirm that the organization shares common religious doctrines, principles, disciplines, or practices with a church or a convention or association of churches;

(ii) A church or a convention or association of churches has the authority to appoint or remove, or to control the appointment or removal of, at least one of the organization's officers or directors;

(iii) The corporate name of the organization indicates an institutional relationship with a church or a convention or association of churches;

(iv) The organization reports at least annually on its financial and general operations to a church or a convention or association of churches;

(v) An institutional relationship between the organization and a church or a convention or association of churches is affirmed by the church, or convention or association of churches, or a designee thereof; and

(vi) In the event of dissolution, the organization's assets are required to be distributed to a church or a convention or association of churches, or to an affiliate thereof within the meaning of this paragraph (h).

(4) *Internal support.* An organization is internally supported, for purposes of paragraph (h)(1)(iii) of this section, unless it both—

(i) Offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and

(ii) Normally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

(5) *Special rule.* Men's and women's organizations, seminaries, mission societies, and youth groups that satisfy paragraphs (h)(1) (i) and (ii) of this section are integrated auxiliaries of a church regardless of whether such an organization meets the internal support requirement under paragraph (h)(1)(iii) of this section.

(6) *Effective date.* This paragraph (h) applies for returns filed for taxable years beginning after December 31, 1969. For returns filed for taxable years beginning after December 31, 1969 but beginning before December 20, 1995, the definition for the term *integrated auxiliary of a church* set forth in § 1.6033–2(g)(5) (as contained in the 26 CFR edition revised as of April 1, 1995) may be used as an alternative definition to such term set forth in this paragraph (h).

(7) *Examples of internal support.* The internal support test of this paragraph (h) is illustrated by the following examples, in each of which it is assumed that the organization's provision of goods and services does not constitute an unrelated trade or business:

Example 1. Organization A is described in sections 501(c)(3) and 509(a)(2) and is affiliated (within the meaning of this paragraph (h)) with a church. Organization A publishes a weekly newspaper as its only activity. On an incidental basis, some copies of Organization A's publication are sold to nonmembers of the church with which it is affiliated. Organization A advertises for subscriptions at places of worship of the church. Organization A is internally supported, regardless of its sources of financial support, because it does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public. Organization A is an integrated auxiliary.

Example 2. Organization B is a retirement home described in sections 501(c)(3) and 509(a)(2). Organization B is affiliated (within the meaning of this paragraph (h)) with a

church. Admission to Organization B is open to all members of the community for a fee. Organization B advertises in publications of general distribution appealing to the elderly and maintains its name on non-denominational listings of available retirement homes. Therefore, Organization B offers its services for sale to the general public on more than an incidental basis. Organization B receives a cash contribution of $50,000 annually from the church. Fees received by Organization B from its residents total $100,000 annually. Organization B does not receive any government support or contributions from the general public. Total support is $150,000 ($100,000 + $50,000), and $100,000 of that total is from receipts from the performance of services (66⅔% of total support). Therefore, Organization B receives more than 50 percent of its support from receipts from the performance of services. Organization B is not internally supported and is not an integrated auxiliary.

Example 3. Organization C is a hospital that is described in sections 501(c)(3) and 509(a)(1). Organization C is affiliated (within the meaning of this paragraph (h)) with a church. Organization C is open to all persons in need of hospital care in the community, although most of Organization C's patients are members of the same denomination as the church with which Organization C is affiliated. Organization C maintains its name on hospital listings used by the general public, and participating doctors are allowed to admit all patients. Therefore, Organization C offers its services for sale to the general public on more than an incidental basis. Organization C annually receives $250,000 in support from the church, $1,000,000 in payments from patients and third party payors (including Medicare, Medicaid and other insurers) for patient care, $100,000 in contributions from the public, $100,000 in grants from the federal government (other than Medicare and Medicaid payments) and $50,000 in investment income. Total support is $1,500,000 ($250,000 + $1,000,000 + $100,000 + $100,000 + $50,000), and $1,200,000 ($1,000,000 + $100,000 + $100,000) of that total is support from receipts from the performance of services, government sources, and public contributions (80% of total support). Therefore, Organization C receives more than 50 percent of its support from receipts from the performance of services, government sources, and public contributions. Organization C is not internally supported and is not an integrated auxiliary.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 27, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30839 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1, 301 and 602

[TD 8632]

RIN 1544–AM00

Section 482 Cost Sharing Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to qualified cost sharing arrangements under section 482 of the Internal Revenue Code. These regulations reflect changes to section 482 made by the Tax Reform Act of 1986, and provide guidance to revenue agents and taxpayers implementing the changes.

DATES: These regulations are effective January 1, 1996.

These regulations are applicable for taxable years beginning on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Sams of the Office of Associate Chief Counsel (International), IRS (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1364. Responses to these collections of information are required to determine whether an intangible development arrangement is a qualified cost sharing arrangement and who are the participants in such arrangement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per recordkeeper is 8 hours. The estimated average annual burden per respondent is 0.5 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 482 was amended by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561, et. seq. (1986–3 C.B. (Vol. 1) 1, 478). On January 30, 1992, a notice of proposed rulemaking concerning the section 482 amendment in the context of cost sharing was published in the Federal Register (INTL–0372–88, 57 FR 3571).

Written comments were received with respect to the notice of proposed rulemaking, and a public hearing was held on August 31, 1992. After consideration of all the comments, the proposed regulations under section 482 are adopted as revised by this Treasury decision, and the corresponding temporary regulations (which contain the cost sharing regulations as in effect since 1968) are removed.

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The Conference Committee report to the Act indicated that in revising section 482, Congress did not intend to preclude the use of bona fide research and development cost sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties. The Conference Committee report stated, however, that in order for cost sharing arrangements to produce results consistent with the commensurate-with-income standard, (a) a cost sharer should be expected to bear its portion of all research and development costs, on unsuccessful as well as successful products, within an appropriate product area, and the costs of research and development at all relevant development stages should be shared, (b) the allocation of costs generally should be proportionate to profit as determined before deduction for research and development, and (c) to the extent that one party contributes funds toward research and development at a significantly earlier point in time than another (or is otherwise putting its funds at risk to a greater extent than the other) that party should receive an appropriate return on its investment. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–638.

The Conference Committee report to the Act recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482 (issued in 1968) should be modified in any respect.

The White Paper

In response to the Conference Committee's directive, the IRS and the Treasury Department issued a study of intercompany pricing [Notice 88–123 (1988–2 C.B. 458)] on October 18, 1988 (the White Paper). The White Paper suggested that most bona fide cost sharing arrangements should have certain provisions. For example, the White Paper stated that most product areas covered by cost sharing arrangements should be within three-digit Standard Industrial Classification codes, that most participants should be assigned exclusive geographic rights in developed intangibles (and should predict benefits and divide costs accordingly) and that marketing intangibles should be excluded from bona fide cost sharing arrangements.

Comments on the White Paper indicated that, in practice, there was a great deal of variety in the terms of bona fide cost sharing arrangements, and that if the White Paper's suggestions were incorporated in regulations, the regulations would unduly restrict the availability of cost sharing.

The 1992 Proposed Regulations

The IRS issued proposed cost sharing regulations on January 30, 1992 (INTL–0372–88, 57 FR 3571). In general, the proposed regulations allowed more flexibility than anticipated by the White Paper, relying on anti-abuse tests rather than requiring standard cost sharing provisions.

The proposed regulations stated that in order to be qualified, a cost sharing arrangement had to meet the following five requirements: (1) the arrangement had to have two or more eligible participants, (2) the arrangement had to be recorded in writing contemporaneously with the formation of the cost sharing arrangement, (3) the eligible participants had to share the costs and risks of intangible development in return for a specified interest in any intangible produced, (4) the arrangement had to reflect a reasonable effort by each eligible participant to share costs and risks in proportion to anticipated benefits from using developed intangibles, and (5) the arrangement had to meet certain administrative requirements. The key requirements were that participants had to be eligible and that costs and risks had to be proportionate to benefits.

Under the proposed regulations, only a controlled taxpayer that would use developed intangibles in the active conduct of its trade or business was eligible to participate in a cost sharing arrangement. This requirement was considered necessary to ensure that controlled foreign entities were not established simply to participate in cost sharing arrangements without performing any other meaningful function, and to ensure that each participant's share of anticipated benefits was measurable.

The proposed regulations allowed costs to be divided based on any measurement that would reasonably predict cost sharing benefits (e.g., anticipated units of production or anticipated sales). However, the basis for measuring anticipated benefits and dividing costs was checked by a cost-to-operating-income ratio. The method for dividing costs was presumed to be unreasonable if a U.S. participant's ratio of shared costs to operating income attributable to developed intangibles was grossly disproportionate to the cost-to-operating-income ratio of the other participants.

If a U.S. participant's cost-to-operating-income ratio was not grossly disproportionate, a section 482 allocation could still be made under three circumstances: (a) if the cost-to-operating-income ratio was disproportionate (allocation of costs), (b) if the pool of costs shared was too broad or too narrow, so that the U.S. participant was paying for research that it would not use (allocation of costs), or (c) if the cost-to-operating-income ratio was substantially disproportionate, such that a transfer of an intangible could be deemed to have occurred (allocation of income).

Under the proposed regulations, the IRS could also make an allocation of income to reflect a buy-in or buy-out event, that is, a transfer of an intangible that could occur, for example, when a participant joined or left a cost sharing arrangement.

Comments on the 1992 Proposed Regulations

The 1992 proposed cost sharing regulations were generally well received. However, there were five areas of particular concern to commenters. The first was the mechanical use of cost-to-operating-income ratios as a standard for measuring the reasonableness of an effort to share costs in proportion to anticipated benefits. Commenters noted that operating income attributable to developed intangibles was difficult to measure, and that other bases for measuring benefits might produce more reliable results. Commenters also believed that the ratios might be overused, leading to adjustments to costs in every year, and to many deemed transfers of intangibles. In addition, commenters stated that the ratios did not provide any certainty that a cost sharing arrangement would not be disregarded, since a ''grossly disproportionate'' ratio was not numerically defined.

The second area of concern was the eligible participant requirement. Commenters argued that separate research entities (with no separate active trade or business) should be allowed to participate in cost sharing arrangements, as should marketing affiliates. Commenters also argued that transfers of intangibles to unrelated entities should not disqualify a participant, and that foreign-to-foreign transfers should not necessarily be monitored. Some comments also stated that controlled entities should be able to participate even if their cost sharing payments would be characterized differently for purposes of foreign law.

The third area of concern was the regulations' requirement that every participant be able to benefit from every intangible developed under a cost sharing arrangement. Commenters stated that the regulations should allow both single-product cost sharing arrangements and umbrella cost sharing arrangements (i.e., cost sharing arrangements under which a broad category of a controlled group's research and development would be covered).

The fourth area of concern was the buy-in and buy-out rules. There were some suggestions for clarifying and simplifying the rules. For example, comments urged that the regulations provide that one participant's abandonment of its rights would not necessarily confer benefits on the other participants, and that a new participant need not always make a buy-in payment when joining a cost sharing arrangement. Suggestions for simplifying the rules generally consisted of proposed safe harbors for valuing intangibles.

The final general area of concern was the administrative requirements. Several commenters suggested that annual adjustments to the method used to share costs should not be required. Commenters also suggested that taxpayers not be required to attach their cost sharing arrangements to their returns, and that the time period for producing records be increased.

In addition to these general areas of concern, commenters noted that there should be more guidance about when the IRS would deem a cost sharing

arrangement to exist. Commenters also argued that existing cost sharing arrangements should be grandfathered, or that there should be a longer transition period. Commenters suggested that financial accounting rules be used to calculate costs to be shared, and that the IRS address the impact of currency fluctuations on the cost-to-operating-income ratios. Finally, commenters asked that the regulations clarify that a cost sharing arrangement would not be deemed to create a partnership or a U.S. trade or business.

The Final Regulations

Without fundamentally altering the policies of the 1992 proposed regulations, the final regulations reflect numerous modifications in response to the comments described above. They also reflect the approach of the final section 482 regulations relating to transfers of tangible and intangible property.

Section 1.482–7(a)(1) defines a cost sharing arrangement as an agreement for sharing costs in proportion to reasonably anticipated benefits from the individual exploitation of interests in the intangibles that are developed. In order to claim the benefits of the safe harbor, a taxpayer must also satisfy certain formal requirements (enumerated in § 1.482–7(b)). The district director may apply the cost sharing rules to any arrangement that in substance constitutes a cost sharing arrangement, notwithstanding any failure to satisfy particular requirements of the safe harbor. It is further provided that a qualified cost sharing arrangement, or an arrangement treated in substance as such, will not be treated as a partnership. (A corresponding provision is added to § 301.7701–3 pertaining to the definition of a partnership.) Neither will a foreign participant be treated as engaged in a trade or business within the United States solely by virtue of its participation in such an arrangement.

Section 1.482–7(a)(2) restates the general rule of cost sharing in a manner intended to emphasize its limitation on allocations: no section 482 allocation will be made with respect to a qualified cost sharing arrangement, except to make each controlled participant's share of the intangible development costs equal to its share of reasonably anticipated benefits.

Section 1.482–7(b) contains the requirements for a qualified cost sharing arrangement. This provision substantially tracks the proposed regulations. A modification was made in the second requirement which now directs that the arrangement provide a method to calculate each controlled participant's share of intangible development costs, based on factors that can reasonably be expected to reflect anticipated benefits. The new standard is intended to ensure that cost sharing arrangements will not be disregarded by the IRS as long as the factors upon which an estimate of benefits was based were reasonable, even if the estimate proved to be inaccurate.

Section 1.482–7(b)(4) requires that a cost sharing arrangement be set forth in writing and contain a number of specified provisions, including the interest that each controlled participant will receive in any intangibles developed pursuant to the arrangement. The intangibles developed under a cost sharing arrangement are referred to as the ''covered intangibles.'' It is possible that the research activity undertaken may result in development of intangible property that was not foreseen at the inception of the cost sharing arrangement; any such property is also included within the definition of the term covered intangibles. The prescriptive rules in relation to the scope of the intangible development area under the proposed regulations are eliminated in favor of a flexible definition that encompasses any research and development actually undertaken under the cost sharing arrangement.

Section 1.482–7(c) provides rules for being a participant in a qualified cost sharing arrangement. Unlike the proposed regulations, the final regulations permit participation by unrelated persons, which are referred to as ''uncontrolled participants.'' Controlled taxpayers may be participants, referred to as ''controlled participants,'' if they satisfy the conditions set forth in these rules. These qualification rules replace the proposed regulations' concept of ''eligible participant.'' The tax treatment of controlled taxpayers that do not qualify as controlled participants provided in § 1.482–7(c)(4) essentially tracks the treatment provided for ineligible participants under the proposed regulations.

The requirements for being a controlled participant are basically the same as in the proposed regulations. In particular, a controlled participant must use or reasonably expect to use covered intangibles in the active conduct of a trade or business. Thus, an entity that chiefly provides services (e.g., as a contract researcher) may not be a controlled participant. These provisions are necessary for the reason that they are necessary to the proposed regulations: to prevent foreign controlled entities from being established simply to participate in cost sharing arrangements. In accordance with § 1.482–7(c)(4) mentioned above, service entities (such as contract researchers) may furnish research and development services to the members of a qualified cost sharing arrangement, with the appropriate consideration for such assistance in the research and development undertaken in the intangible development area being governed by the rules in § 1.482-4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). In the case of a controlled research entity, the appropriate arm's length compensation would generally be determined under the principles of § 1.482–2(b) (Performance of services for another). Each controlled participant would be deemed to incur as part of its intangible development costs a share of such compensation equal to its share of reasonably anticipated benefits.

As under the proposed regulations, the activity of another person may be attributed to a controlled taxpayer for purposes of meeting the active conduct requirement. However, modified language is adopted to be more precise concerning the intended requirements for attribution. These requirements were phrased in the proposed regulations as bearing the risk and receiving the benefits of the attributed activity. Under the final regulations, the attribution will be made only in cases in which the controlled taxpayer exercises substantial managerial and operational control over the attributed activities.

As under the proposed regulations, a principal purpose to use cost sharing to accomplish a transfer or license of covered intangibles to uncontrolled or controlled taxpayers will defeat satisfaction of the active conduct requirement. However, a principal purpose will not be implied where there are legitimate business reasons for subsequently licensing covered intangibles.

The subgroup rules of the proposed regulations are eliminated. Their major purpose is accomplished by a simpler provision (see the discussion of § 1.482–7(h)). In addition, the final regulations treat all members of a consolidated group as a single participant.

Section 1.482–7(d) defines intangible development costs as operating expenses other than depreciation and amortization expense, plus an arm's length charge for tangible property made available to the cost sharing arrangement. Costs to be shared include all costs relating to the intangible development area, which, as noted, comprises any research actually undertaken under the cost sharing

arrangement. As under the proposed regulations, the district director may adjust the pool of costs shared in order to properly reflect costs that relate to the intangible development area.

Section 1.482–7(e) defines anticipated benefits as additional income generated or costs saved by the use of covered intangibles. The pool of benefits may also be adjusted in order to properly reflect benefits that relate to the intangible development area.

Section 1.482–7(f) governs cost allocations by the district director in order to make a controlled participant's share of costs equal to its share of reasonably anticipated benefits. Anticipated benefits of uncontrolled participants will be excluded from anticipated benefits in calculating the benefits shares of controlled participants. A share of reasonably anticipated benefits will be determined using the most reliable estimate of benefits. This rule echoes the best method rule for determining the most reliable measure of an arm's length result under § 1.482–1(c).

The reliability of an estimate of benefits principally depends on two factors: the reliability of the basis for measuring benefits used and the reliability of the projections used. The cost-to-operating-income ratio used in the proposed regulations to check the reasonableness of an effort to share costs in proportion to anticipated benefits has not been included in the final regulations. Rather, the final regulations provide that an allocation of costs or income may be made if the taxpayer did not use the most reliable estimate of benefits, which depends on the facts and circumstances of each case.

Section 1.482–7(f)(3)(ii) provides that in estimating a controlled participant's share of benefits, the most reliable basis for measuring anticipated benefits must be used, taking into account the factors set forth in § 1.482–1(c)(2)(ii). The measurement basis used must be consistent for all controlled participants. The regulations provide that benefits may be measured directly or indirectly. In addition, regardless of whether a direct or indirect basis of measurement is employed, it may be necessary to make adjustments to account for material differences in the activities that controlled participants perform in connection with exploitation of covered intangibles, such as between wholesale and retail distribution.

Section 1.482–7(f)(3)(iii) describes the scope of various indirect bases for measuring benefits, such as units, sales, and operating profit. Indirect bases other than those enumerated may be employed as long as they bear a relationship to benefits.

Section 1.482–7(f)(3)(iv) discusses projections used to estimate benefits. Projections required for this purpose generally include a determination of the time period between the inception of the research and development and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the intangible will generate benefits. However, the regulations note that in certain circumstances, current annual benefit shares may be used in lieu of projections.

Section 1.482–7(f)(3)(iv)(B) states that a significant divergence between projected and actual benefit shares may indicate that the projections were not reliable. A significant divergence is defined as divergence in excess of 20% between projected and actual benefit shares. If there is a significant divergence, which is not due to an unforeseeable event, then the district director may use actual benefits as the most reliable basis for measuring benefits. Conversely, no allocation will be made based on a divergence that is not considered significant as long as the estimate is made using the most reliable basis for measuring benefits.

For purposes of the 20% test, all non-U.S. controlled participants are treated as a single controlled participant in order that a divergence by a foreign controlled participant with a very small share of the total costs will not necessarily trigger an allocation (section 1.482–7(f)(3)(iv)(D), *Example 8*, illustrates this rule). Section 1.482–7(f)(3)(iv)(B) and (C) notes that adjustments among foreign controlled participants will only be made if the adjustment will have a substantial U.S. tax impact, for example, under subpart F.

Section 1.482–7(f)(4) states that cost allocations must be reflected for tax purposes in the year in which costs were incurred. This reflects a change from the rule in the 1992 proposed regulations, which stated that cost allocations would be included in income in the taxable year under review, even if the costs to be allocated were incurred in a prior taxable year. The purpose of the change was to match up cost adjustments with the year to which they relate in accordance with the clear reflection of income principle of section 482.

Section 1.482–7(g) provides buy-in and buy-out rules that are similar to the rules in the proposed regulations. However, some of the clarifications suggested by commenters have been incorporated in these rules. A ''substantially disproportionate'' cost-to-operating-income ratio will no longer trigger an adjustment to income under these rules. However, if, after any cost allocations authorized by § 1.482–7(a)(2), the economic substance of the arrangement is inconsistent with the terms of the arrangement over a period of years (for example, through a consistent pattern of one controlled participant bearing an inappropriately high or low share of the cost of intangible development), then the district director may impute an agreement consistent with the course of conduct. In that case, one or more of the participants would be deemed to own a greater interest in covered intangibles than provided under the arrangement, and must receive buy-in payments from the other participants.

The rules do not provide safe harbor methods for valuing intangibles, but rely on the intangible valuation rules of §§ 1.482–1 and 1.482–4 through 1.482–6. To the extent some participants furnish a disproportionately greater amount of existing intangibles to the arrangement, they must be compensated by royalties by the participants who furnish a disproportionately lesser amount of existing intangibles to the arrangement. Buy-in payments owed are netted against payments owing, and only the net payment is treated as a royalty. No implication is intended that netting of cross royalties is permissible outside of the qualified cost sharing safe harbor rules.

Section 1.482–7(h) provides rules regarding the character of payments made pursuant to a qualified cost sharing arrangement. Cost sharing payments received are generally treated as reductions of research and development expense. A net approach is applied to foster simplicity and generally preserve the character of items actually incurred by a participant to the extent not reimbursed. In addition, for purposes of the research credit determined under section 41, cost sharing payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–8(e). Finally, any payment that in substance constitutes a cost sharing payment will be treated as such, regardless of its characterization under foreign law. This rule is intended to enable foreign entities to participate in cost sharing arrangements with U.S. controlled participants even if foreign law does not recognize cost sharing. This rule obviated the main reason for the subgroup rules which, as noted, have accordingly been eliminated.

Section 1.482–7(i) requires that controlled participants must use a consistent accounting method for measuring costs and benefits, and must translate foreign currencies on a consistent basis. To the extent that the accounting method materially differs from U.S. generally accepted accounting principles, any such material differences must be documented, as provided in § 1.482–7(j)(2)(iv).

Section 1.482–7(j) provides simplified recordkeeping and reporting requirements. It is anticipated that many of the background documents necessary for purposes of this section will be kept pursuant to section 6662(e) and the regulations thereunder.

Section 1.482–7(k) provides that this regulation is effective for taxable years beginning on or after January 1, 1996.

Section 1.482–7(l) allows a one-year transition period for taxpayers to conform their cost sharing arrangements with the requirements of the final regulations. A longer period was not considered necessary, given the increased flexibility and the reduced number of administrative requirements of the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Lisa Sams, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding an entry for section 1.482–7 to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.482–7 is also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482–0 is amended by:

1. Removing the entry for § 1.482–7T.
2. Adding the entry for § 1.482–7 to read as follows:

§ 1.482–0 Outline of regulations under 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.
(1) Scope and application of the rules in this section.
(2) Limitation on allocations.
(3) Cross references.
(b) Qualified cost sharing arrangement.
(c) Participant.
(1) In general.
(2) Active conduct of a trade or business.
(i) Trade or business.
(ii) Active conduct.
(iii) Examples.
(3) Use of covered intangibles in the active conduct of a trade or business.
(i) In general.
(ii) Example.
(4) Treatment of a controlled taxpayer that is not a controlled participant.
(i) In general.
(ii) Example.
(5) Treatment of consolidated group.
(d(d) Costs.
(1) Intangible development costs.
(2) Examples.
(e) Anticipated benefits.
(1) Benefits.
(2) Reasonably anticipated benefits.
(f) Cost allocations.
(1) In general.
(2) Share of intangible development costs.
(i) In general.
(ii) Example.
(3) Share of reasonably anticipated benefits.
(i) In general.
(ii) Measure of benefits.
(iii) Indirect bases for measuring anticipated benefits.
(A) Units used, produced or sold.
(B) Sales.
(C) Operating profit.
(D) Other bases for measuring anticipated benefits.
(E) Examples.
(iv) Projections used to estimate anticipated benefits.
(A) In general.
(B) Unreliable projections.
(C) Foreign-to-foreign adjustments.
(D) Examples.
(4) Timing of allocations.
(g) Allocations of income, deductions or other tax items to reflect transfers of intangibles (buy-in).
(1) In general.
(2) Pre-existing intangibles.
(3) New controlled participant.
(4) Controlled participant relinquishes interests.
(5) Conduct inconsistent with the terms of a cost sharing arrangement.
(6)Failure to assign interests under a qualified cost sharing arrangement.
(7) Form of consideration.
(i) Lump sum payments.
(ii) Installment payments.
(iii) Royalties.
(8) Examples.e
(h) Character of payments made pursuant to a qualified cost sharing arrangement.
(1) In general.
(2) Examples.
(i) Accounting requirements.
(j) Administrative requirements.
(1) In general.
(2) Documentation.
(3) Reporting requirements.
(k) Effective date.
(l) Transition rule.

* * * * *

Par. 3. Section 1.482–7 is added to read as follows:

§ 1.482–7 Sharing of costs.

(a) *In general*—(1) *Scope and application of the rules in this section.* A cost sharing arrangement is an agreement under which the parties agree to share the costs of development of one or more intangibles in proportion to their shares of reasonably anticipated benefits from their individual exploitation of the interests in the intangibles assigned to them under the arrangement. A taxpayer may claim that a cost sharing arrangement is a qualified cost sharing arrangement only if the agreement meets the requirements of paragraph (b) of this section. Consistent with the rules of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms), the district director may apply the rules of this section to any arrangement that in substance constitutes a cost sharing arrangement, notwithstanding a failure to comply with any requirement of this section. A qualified cost sharing arrangement, or an arrangement to which the district director applies the rules of this section, will not be treated as a partnership to which the rules of subchapter K apply. See § 301.7701–3(e) of this chapter. Furthermore, a participant that is a foreign corporation or nonresident alien individual will not be treated as engaged in trade or business within the United States solely

by reason of its participation in such an arrangement. See generally § 1.864–2(a).

(2) *Limitation on allocations.* The district director shall not make allocations with respect to a qualified cost sharing arrangement except to the extent necessary to make each controlled participant's share of the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equal to its share of reasonably anticipated benefits attributable to such development, under the rules of this section. If a controlled taxpayer acquires an interest in intangible property from another controlled taxpayer (other than in consideration for bearing a share of the costs of the intangible's development), then the district director may make appropriate allocations to reflect an arm's length consideration for the acquisition of the interest in such intangible under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6. See paragraph (g) of this section. An interest in an intangible includes any commercially transferable interest, the benefits of which are susceptible of valuation. See § 1.482–4(b) for the definition of an intangible.

(3) *Cross references.* Paragraph (c) of this section defines participant. Paragraph (d) of this section defines the costs of intangible development. Paragraph (e) of this section defines the anticipated benefits of intangible development. Paragraph (f) of this section provides rules governing cost allocations. Paragraph (g) of this section provides rules governing transfers of intangibles other than in consideration for bearing a share of the costs of the intangible's development. Rules governing the character of payments made pursuant to a qualified cost sharing arrangement are provided in paragraph (h) of this section. Paragraph (i) of this section provides accounting requirements. Paragraph (j) of this section provides administrative requirements. Paragraph (k) of this section provides an effective date. Paragraph (l) provides a transition rule.

(b) *Qualified cost sharing arrangement.* A qualified cost sharing arrangement must—

(1) Include two or more participants;

(2) Provide a method to calculate each controlled participant's share of intangible development costs, based on factors that can reasonably be expected to reflect that participant's share of anticipated benefits;

(3) Provide for adjustment to the controlled participants' shares of intangible development costs to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the arrangement; and

(4) Be recorded in a document that is contemporaneous with the formation (and any revision) of the cost sharing arrangement and that includes—

(i) A list of the arrangement's participants, and any other member of the controlled group that will benefit from the use of intangibles developed under the cost sharing arrangement;

(ii) The information described in paragraphs (b)(2) and (b)(3) of this section;

(iii) A description of the scope of the research and development to be undertaken, including the intangible or class of intangibles intended to be developed;

(iv) A description of each participant's interest in any covered intangibles. A covered intangible is any intangible property that is developed as a result of the research and development undertaken under the cost sharing arrangement (intangible development area);

(v) The duration of the arrangement; and

(vi) The conditions under which the arrangement may be modified or terminated and the consequences of such modification or termination, such as the interest that each participant will receive in any covered intangibles.

(c) *Participant*—(1) *In general.* For purposes of this section, a participant is a controlled taxpayer that meets the requirements of this paragraph (c)(1) (controlled participant) or an uncontrolled taxpayer that is a party to the cost sharing arrangement (uncontrolled participant). See § 1.482–1(i)(5) for the definitions of controlled and uncontrolled taxpayers. A controlled taxpayer may be a controlled participant only if it—

(i) Uses or reasonably expects to use covered intangibles in the active conduct of a trade or business, under the rules of paragraphs (c)(2) and (c)(3) of this section;

(ii) Substantially complies with the accounting requirements described in paragraph (i) of this section; and

(iii) Substantially complies with the administrative requirements described in paragraph (j) of this section.

(2) *Active conduct of a trade or business*—(i) *Trade or business.* The rules of § 1.367(a)–2T(b)(2) apply in determining whether the activities of a controlled taxpayer constitute a trade or business. For this purpose, the term *controlled taxpayer* must be substituted for the term *foreign corporation*.

(ii) *Active conduct.* In general, a controlled taxpayer actively conducts a trade or business only if it carries out substantial managerial and operational activities. For purposes only of this paragraph (c)(2), activities carried out on behalf of a controlled taxpayer by another person may be attributed to the controlled taxpayer, but only if the controlled taxpayer exercises substantial managerial and operational control over those activities.

(iii) *Examples.* The following examples illustrate this paragraph (c)(2):

Example 1. Foreign Parent (FP) enters into a cost sharing arrangement with its U.S. Subsidiary (USS) to develop a cheaper process for manufacturing widgets. USS is to receive the right to exploit the intangible to make widgets in North America, and FP is to receive the right to exploit the intangible to make widgets in the rest of the world. However, USS does not manufacture widgets; rather, USS acts as a distributor for FP's widgets in North America. Because USS is simply a distributor of FP's widgets, USS does not use or reasonably expect to use the manufacturing intangible in the active conduct of its trade or business, and thus USS is not a controlled participant.

Example 2. The facts are the same as in *Example 1,* except that USS contracts to have widgets it sells in North America made by a related manufacturer (that is not a controlled participant) using USS' cheaper manufacturing process. USS purchases all the manufacturing inputs, retains ownership of the work in process as well as the finished product, and bears the risk of loss at all times in connection with the operation. USS compensates the manufacturer for the manufacturing functions it performs and receives substantially all of the intangible value attributable to the cheaper manufacturing process. USS exercises substantial managerial and operational control over the manufacturer to ensure USS's requirements are satisfied concerning the timing, quantity, and quality of the widgets produced. USS uses the manufacturing intangible in the active conduct of its trade or business, and thus USS is a controlled participant.

(3) *Use of covered intangibles in the active conduct of a trade or business*—(i) *In general.* A covered intangible will not be considered to be used, nor will the controlled taxpayer be considered to reasonably expect to use it, in the active conduct of the controlled taxpayer's trade or business if a principal purpose for participating in the arrangement is to obtain the intangible for transfer or license to a controlled or uncontrolled taxpayer.

(ii) *Example.* The following example illustrates the absence of such a principal purpose:

Example. Controlled corporations A, B, and C enter into a qualified cost sharing arrangement for the purpose of developing a new technology. Costs are shared equally

among the three controlled taxpayers. A, B, and C have the exclusive rights to manufacture and sell products based on the new technology in North America, South America, and Europe, respectively. When the new technology is developed, C expects to use it to manufacture and sell products in most of Europe. However, for sound business reasons, C expects to license to an unrelated manufacturer the right to use the new technology to manufacture and sell products within a particular European country owing to its relative remoteness and small size. In these circumstances, C has not entered into the arrangement with a principal purpose of obtaining covered intangibles for transfer or license to controlled or uncontrolled taxpayers, because the purpose of licensing the technology to the unrelated manufacturer is relatively insignificant in comparison to the overall purpose of exploiting the European market.

(4) *Treatment of a controlled taxpayer that is not a controlled participant*—(i) *In general.* If a controlled taxpayer that is not a controlled participant (within the meaning of this paragraph (c)) provides assistance in relation to the research and development undertaken in the intangible development area, it must receive consideration from the controlled participants under the rules of § 1.482–4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). For purposes of paragraph (d) of this section, such consideration is treated as an operating expense and each controlled participant must be treated as incurring a share of such consideration equal to its share of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section).

(ii) Example. The following example illustrates this paragraph (c)(4):

Example. (i) U.S. Parent (USP), one foreign subsidiary (FS), and a second foreign subsidiary constituting the group's research arm (R+D) enter into a cost sharing agreement to develop manufacturing intangibles for a new product line A. USP and FS are assigned the exclusive rights to exploit the intangibles respectively in the United States and Europe, where each presently manufactures and sells various existing product lines. R+D, whose activity consists solely in carrying out research for the group, is assigned the rights to exploit the new technology in Asia, where no group member presently operates, but which is reliably projected to be a major market for product A. R+D will license the Asian rights to an unrelated third party. It is reliably projected that the shares of reasonably anticipated benefits of USP and FS (i.e., not taking R+D into account) will be 66 ⅔% and 33 ⅓%, respectively. The parties' agreement provides that USP and FS will reimburse 40% and 20%, respectively, of the intangible development costs incurred by R+D with respect to the new intangible.

(ii) R+D does not qualify as a controlled participant within the meaning of paragraph (c) of this section. Therefore, R+D is treated as a service provider for purposes of this section and must receive arm's length consideration for the assistance it is deemed to provide to USP and FS, under the rules of § 1.482–4(f)(3)(iii). Such consideration must be treated as intangible development costs incurred by USP and FS in proportion to their shares of reasonably anticipated benefits (i.e., 66 ⅔% and 33 ⅓%, respectively). R+D will not be considered to bear any share of the intangible development costs under the arrangement.

(iii) The Asian rights nominally assigned to R+D under the agreement must be treated as being held by USP and FS in accordance with their shares of the intangible development costs (i.e., 66 ⅔% and 33 ⅓%, respectively). See paragraph (g)(6) of this section. Thus, since under the cost sharing agreement the Asian rights are owned by R+D, the district director may make allocations to reflect an arm's length consideration owed by R+D to USP and FS for these rights under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6.

(5) *Treatment of consolidated group.* For purposes of this section, all members of the same affiliated group (within the meaning of section 1504(a)) that join in the filing of a consolidated return for the taxable year under section 1501 shall be treated as one taxpayer.

(d) *Costs*—(1) *Intangible development costs.* For purposes of this section, a controlled participant's costs of developing intangibles for a taxable year mean all of the costs incurred by that participant related to the intangible development area, plus all of the cost sharing payments it makes to other controlled and uncontrolled participants, minus all of the cost sharing payments it receives from other controlled and uncontrolled participants. Costs incurred related to the intangible development area consist of the following items: operating expenses as defined in § 1.482–5(d)(3), other than depreciation or amortization expense, plus (to the extent not included in such operating expenses, as defined in § 1.482–5(d)(3)) the charge for the use of any tangible property made available to the qualified cost sharing arrangement. If tangible property is made available to the qualified cost sharing arrangement by a controlled participant, the determination of the appropriate charge will be governed by the rules of § 1.482–2(c) (Use of tangible property). Intangible development costs do not include the consideration for the use of any intangible property made available to the qualified cost sharing arrangement. See paragraph (g)(2) of this section. If a particular cost contributes to the intangible development area and other areas or other business activities, the cost must be allocated between the intangible development area and the other areas or business activities on a reasonable basis. In such a case, it is necessary to estimate the total benefits attributable to the cost incurred. The share of such cost allocated to the intangible development area must correspond to covered intangibles' share of the total benefits. Costs that do not contribute to the intangible development area are not taken into account.

(2) *Examples.* The following examples illustrate this paragraph (d):

Example 1. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a qualified cost sharing arrangement to develop a better mousetrap. USS and FP share the costs of FP's research and development facility that will be exclusively dedicated to this research, the salaries of the researchers, and reasonable overhead costs attributable to the project. They also share the cost of a conference facility that is at the disposal of the senior executive management of each company but does not contribute to the research and development activities in any measurable way. In this case, the cost of the conference facility must be excluded from the amount of intangible development costs.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a qualified cost sharing arrangement to develop a new device. USP and FS share the costs of a research and development facility, the salaries of researchers, and reasonable overhead costs attributable to the project. USP also incurs costs related to field testing of the device, but does not include them in the amount of intangible development costs of the cost sharing arrangement. The district director may determine that the field testing costs are intangible development costs that must be shared.

(e) *Anticipated benefits*—(1) *Benefits.* Benefits are additional income generated or costs saved by the use of covered intangibles.

(2) *Reasonably anticipated benefits.* For purposes of this section, a controlled participant's reasonably anticipated benefits are the aggregate benefits that it reasonably anticipates that it will derive from covered intangibles.

(f) *Cost allocations*—(1) *In general.* For purposes of determining whether a cost allocation authorized by paragraph (a)(2) of this section is appropriate for a taxable year, a controlled participant's share of intangible development costs for the taxable year under a qualified cost sharing arrangement must be compared to its share of reasonably anticipated benefits under the arrangement. A controlled participant's share of intangible development costs is determined under paragraph (f)(2) of this section. A controlled participant's share of reasonably anticipated benefits under the arrangement is determined under paragraph (f)(3) of this section. In

determining whether benefits were reasonably anticipated, it may be appropriate to compare actual benefits to anticipated benefits, as described in paragraph (f)(3)(iv) of this section.

(2) *Share of intangible development costs*—(i) *In general.* A controlled participant's share of intangible development costs for a taxable year is equal to its intangible development costs for the taxable year (as defined in paragraph (d) of this section), divided by the sum of the intangible development costs for the taxable year (as defined in paragraph (d) of this section) of all the controlled participants.

(ii) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) U.S. Parent (USP), Foreign Subsidiary (FS), and Unrelated Third Party (UTP) enter into a cost sharing arrangement to develop new audio technology. In the first year of the arrangement, the controlled participants incur $2,250,000 in the intangible development area, all of which is incurred directly by USP. In the first year, UTP makes a $250,000 cost sharing payment to USP, and FS makes a $800,000 cost sharing payment to USP, under the terms of the arrangement. For that year, the intangible development costs borne by USP are $1,200,000 (its $2,250,000 intangible development costs directly incurred, minus the cost sharing payments it receives of $250,000 from UTP and $800,000 from FS); the intangible development costs borne by FS are $800,000 (its cost sharing payment); and the intangible development costs borne by all of the controlled participants are $2,000,000 (the sum of the intangible development costs borne by USP and FS of $1,200,000 and $800,000, respectively). Thus, for the first year, USP's share of intangible development costs is 60% ($1,200,000 divided by $2,000,000), and FS's share of intangible development costs is 40% ($800,000 divided by $2,000,000).

(ii) For purposes of determining whether a cost allocation authorized by paragraph § 1.482–7(a)(2) is appropriate for the first year, the district director must compare USP's and FS's shares of intangible development costs for that year to their shares of reasonably anticipated benefits. See paragraph (f)(3) of this section.

(3) *Share of reasonably anticipated benefits*—(i) *In general.* A controlled participant's share of reasonably anticipated benefits under a qualified cost sharing arrangement is equal to its reasonably anticipated benefits (as defined in paragraph (e)(2) of this section), divided by the sum of the reasonably anticipated benefits (as defined in paragraph (e)(2) of this section) of all the controlled participants. The anticipated benefits of an uncontrolled participant will not be included for purposes of determining each controlled participant's share of anticipated benefits. A controlled participant's share of reasonably anticipated benefits will be determined using the most reliable estimate of reasonably anticipated benefits. In determining which of two or more available estimates is most reliable, the quality of the data and assumptions used in the analysis must be taken into account, consistent with § 1.482–1(c)(2)(ii) (Data and assumptions). Thus, the reliability of an estimate will depend largely on the completeness and accuracy of the data, the soundness of the assumptions, and the relative effects of particular deficiencies in data or assumptions on different estimates. If two estimates are equally reliable, no adjustment should be made based on differences in the results. The following factors will be particularly relevant in determining the reliability of an estimate of anticipated benefits—

(A) The reliability of the basis used for measuring benefits, as described in paragraph (f)(3)(ii) of this section; and

(B) The reliability of the projections used to estimate benefits, as described in paragraph (f)(3)(iv) of this section.

(ii) *Measure of benefits.* In order to estimate a controlled participant's share of anticipated benefits from covered intangibles, the amount of benefits that each of the controlled participants is reasonably anticipated to derive from covered intangibles must be measured on a basis that is consistent for all such participants. See paragraph (f)(3)(iii)(E), *Example 8,* of this section. Anticipated benefits are measured either on a direct basis, by reference to estimated additional income to be generated or costs to be saved by the use of covered intangibles, or on an indirect basis, by reference to certain measurements that reasonably can be assumed to be related to income generated or costs saved. Such indirect bases of measurement of anticipated benefits are described in paragraph (f)(3)(iii) of this section. A controlled participant's anticipated benefits must be measured on the most reliable basis, whether direct or indirect. In determining which of two bases of measurement of reasonably anticipated benefits is most reliable, the factors set forth in § 1.482–1(c)(2)(ii) (Data and assumptions) must be taken into account. It normally will be expected that the basis that provided the most reliable estimate for a particular year will continue to provide the most reliable estimate in subsequent years, absent a material change in the factors that affect the reliability of the estimate. Regardless of whether a direct or indirect basis of measurement is used, adjustments may be required to account for material differences in the activities that controlled participants undertake to exploit their interests in covered intangibles. See *Example 6* of paragraph (f)(3)(iii)(E) of this section.

(iii) *Indirect bases for measuring anticipated benefits.* Indirect bases for measuring anticipated benefits from participation in a qualified cost sharing arrangement include the following:

(A) *Units used, produced or sold.* Units of items used, produced or sold by each controlled participant in the business activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to the covered intangibles per unit of the item or items used, produced or sold. This circumstance is most likely to arise when the covered intangibles are exploited by the controlled participants in the use, production or sale of substantially uniform items under similar economic conditions.

(B) *Sales.* Sales by each controlled participant in the business activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to covered intangibles per dollar of sales. This circumstance is most likely to arise if the costs of exploiting covered intangibles are not substantial relative to the revenues generated, or if the principal effect of using covered intangibles is to increase the controlled participants' revenues (e.g., through a price premium on the products they sell) without affecting their costs substantially. Sales by each controlled participant are unlikely to provide a reliable basis for measuring benefits unless each controlled participant operates at the same market level (e.g., manufacturing, distribution, etc.).

(C) *Operating profit.* Operating profit of each controlled participant from the activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that such profit is largely attributable to the use of covered intangibles, or if the share of profits attributable to the use of covered intangibles is expected to be similar for each controlled participant. This circumstance is most likely to arise when covered intangibles are integral to the activity that generates the profit and

the activity could not be carried on or would generate little profit without use of those intangibles.

(D) *Other bases for measuring anticipated benefits.* Other bases for measuring anticipated benefits may, in some circumstances, be appropriate, but only to the extent that there is expected to be a reasonably identifiable relationship between the basis of measurement used and additional income generated or costs saved by the use of covered intangibles. For example, a division of costs based on employee compensation would be considered unreliable unless there were a relationship between the amount of compensation and the expected income of the controlled participants from the use of covered intangibles.

(E) *Examples.* The following examples illustrate this paragraph (f)(3)(iii):

Example 1. Foreign Parent (FP) and U.S. Subsidiary (USS) both produce a feedstock for the manufacture of various high-performance plastic products. Producing the feedstock requires large amounts of electricity, which accounts for a significant portion of its production cost. FP and USS enter into a cost sharing arrangement to develop a new process that will reduce the amount of electricity required to produce a unit of the feedstock. FP and USS currently both incur an electricity cost of X% of its other production costs and rates for each are expected to remain similar in the future. How much the new process, if it is successful, will reduce the amount of electricity required to produce a unit of the feedstock is uncertain, but it will be about the same amount for both companies. Therefore, the cost savings each company is expected to achieve after implementing the new process are similar relative to the total amount of the feedstock produced. Under the cost sharing arrangement FP and USS divide the costs of developing the new process based on the units of the feedstock each is anticipated to produce in the future. In this case, units produced is the most reliable basis for measuring benefits and dividing the intangible development costs because each participant is expected to have a similar decrease in costs per unit of the feedstock produced.

Example 2. The facts are the same as in *Example 1,* except that USS pays X% of its other production costs for electricity while FP pays 2X% of its other production costs. In this case, units produced is not the most reliable basis for measuring benefits and dividing the intangible development costs because the participants do not expect to have a similar decrease in costs per unit of the feedstock produced. The district director determines that the most reliable measure of benefit shares may be based on units of the feedstock produced if FP's units are weighted relative to USS' units by a factor of 2. This reflects the fact that FP pays twice as much as USS as a percentage of its other production costs for electricity and, therefore, FP's savings per unit of the feedstock would be twice USS's savings from any new process eventually developed.

Example 3. The facts are the same as in *Example 2,* except that to supply the particular needs of the U.S. market USS manufactures the feedstock with somewhat different properties than FP's feedstock. This requires USS to employ a somewhat different production process than does FP. Because of this difference, it will be more costly for USS to adopt any new process that may be developed under the cost sharing agreement. In this case, units produced is not the most reliable basis for measuring benefit shares. In order to reliably determine benefit shares, the district director offsets the reasonably anticipated costs of adopting the new process against the reasonably anticipated total savings in electricity costs.

Example 4. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new anesthetic drugs. USP obtains the right to use any resulting patent in the U.S. market, and FS obtains the right to use the patent in the European market. USP and FS divide costs on the basis of anticipated operating profit from each patent under development. USP anticipates that it will receive a much higher profit than FS per unit sold because drug prices are uncontrolled in the U.S., whereas drug prices are regulated in many European countries. In this case, the controlled taxpayers' basis for measuring benefits is the most reliable.

Example 5. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) both manufacture and sell fertilizers. They enter into a cost sharing arrangement to develop a new pellet form of a common agricultural fertilizer that is currently available only in powder form. Under the cost sharing arrangement, USS obtains the rights to produce and sell the new form of fertilizer for the U.S. market while FP obtains the rights to produce and sell the fertilizer for the rest of the world. The costs of developing the new form of fertilizer are divided on the basis of the anticipated sales of fertilizer in the participants' respective markets.

(ii) If the research and development is successful the pellet form will deliver the fertilizer more efficiently to crops and less fertilizer will be required to achieve the same effect on crop growth. The pellet form of fertilizer can be expected to sell at a price premium over the powder form of fertilizer based on the savings in the amount of fertilizer that needs to be used. If the research and development is successful, the costs of producing pellet fertilizer are expected to be approximately the same as the costs of producing powder fertilizer and the same for both FP and USS. Both FP and USS operate at approximately the same market levels, selling their fertilizers largely to independent distributors.

(iii) In this case, the controlled taxpayers' basis for measuring benefits is the most reliable.

Example 6. The facts are the same as in *Example 5,* except that FP distributes its fertilizers directly while USS sells to independent distributors. In this case, sales of USS and FP are not the most reliable basis for measuring benefits unless adjustments are made to account for the difference in market levels at which the sales occur.

Example 7. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop materials that will be used to train all new entry-level employees. FP and USS determine that the new materials will save approximately ten hours of training time per employee. Because their entry-level employees are paid on differing wage scales, FP and USS decide that they should not divide costs based on the number of entry-level employees hired by each. Rather, they divide costs based on compensation paid to the entry-level employees hired by each. In this case, the basis used for measuring benefits is the most reliable because there is a direct relationship between compensation paid to new entry-level employees and costs saved by FP and USS from the use of the new training materials.

Example 8. U.S. Parent (USP), Foreign Subsidiary 1 (FS1) and Foreign Subsidiary 2 (FS2) enter into a cost sharing arrangement to develop computer software that each will market and install on customers' computer systems. The participants divide costs on the basis of projected sales by USP, FS1, and FS2 of the software in their respective geographic areas. However, FS1 plans for sound business reasons not only to sell but also to license the software, and FS1's licensing income (which is a percentage of the licensees' sales) is not counted in the projected benefits. In this case, the basis used for measuring the benefits of each participant is not the most reliable because all of the benefits received by participants are not taken into account. In order to reliably determine benefit shares, FS1's projected benefits from licensing must be included in the measurement on a basis that is the same as that used to measure its own and the other participants' projected benefits from sales (e.g., all participants might measure their benefits on the basis of operating profit).

(iv) *Projections used to estimate anticipated benefits*—(A) *In general.* The reliability of an estimate of anticipated benefits also depends upon the reliability of projections used in making the estimate. Projections required for this purpose generally include a determination of the time period between the inception of the research and development and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the intangible will generate benefits. A projection of the relevant basis for measuring anticipated benefits may require a projection of the factors that underlie it. For example, a projection of operating profits may require a projection of sales, cost of sales, operating expenses, and other factors that affect operating profits. If it is anticipated that there will be significant variation among controlled participants in the timing of their receipt of benefits, and consequently

benefit shares are expected to vary significantly over the years in which benefits will be received, it may be necessary to use the present discounted value of the projected benefits to reliably determine each controlled participant's share of those benefits. If it is not anticipated that benefit shares will significantly change over time, current annual benefit shares may provide a reliable projection of anticipated benefit shares. This circumstance is most likely to occur when the cost sharing arrangement is a long-term arrangement, the arrangement covers a wide variety of intangibles, the composition of the covered intangibles is unlikely to change, the covered intangibles are unlikely to generate unusual profits, and each controlled participant's share of the market is stable.

(B) *Unreliable projections.* A significant divergence between projected benefit shares and actual benefit shares may indicate that the projections were not reliable. In such a case, the district director may use actual benefits as the most reliable measure of anticipated benefits. If benefits are projected over a period of years, and the projections for initial years of the period prove to be unreliable, this may indicate that the projections for the remaining years of the period are also unreliable and thus should be adjusted. Projections will not be considered unreliable based on a divergence between a controlled participant's projected benefit share and actual benefit share if the amount of such divergence for every controlled participant is less than or equal to 20% of the participant's projected benefit share. Further, the district director will not make an allocation based on such divergence if the difference is due to an extraordinary event, beyond the control of the participants, that could not reasonably have been anticipated at the time that costs were shared. For purposes of this paragraph, all controlled participants that are not U.S. persons will be treated as a single controlled participant. Therefore, an adjustment based on an unreliable projection will be made to the cost shares of foreign controlled participants only if there is a matching adjustment to the cost shares of controlled participants that are U.S. persons. Nothing in this paragraph (f)(3)(iv)(B) will prevent the district director from making an allocation if the taxpayer did not use the most reliable basis for measuring anticipated benefits. For example, if the taxpayer measures anticipated benefits based on units sold, and the district director determines that another basis is more reliable for measuring anticipated benefits, then the fact that actual units sold were within 20% of the projected unit sales will not preclude an allocation under this section.

(C) *Foreign-to-foreign adjustments.* Notwithstanding the limitations on adjustments provided in paragraph (f)(3)(iv)(B) of this section, adjustments to cost shares based on an unreliable projection also may be made solely among foreign controlled participants if the variation between actual and projected benefits has the effect of substantially reducing U.S. tax.

(D) *Examples.* The following examples illustrate this paragraph (f)(3)(iv):

Example 1. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop a new car model. The participants plan to spend four years developing the new model and four years producing and selling the new model. USS and FP project total sales of $4 billion and $2 billion, respectively, over the planned four years of exploitation of the new model. Cost shares are divided for each year based on projected total sales. Therefore, USS bears 66⅔% of each year's intangible development costs and FP bears 33⅓% of such costs.

(ii) USS typically begins producing and selling new car models a year after FP begins producing and selling new car models. The district director determines that in order to reflect USS' one-year lag in introducing new car models, a more reliable projection of each participant's share of benefits would be based on a projection of all four years of sales for each participant, discounted to present value.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new and improved household cleaning products. Both participants have sold household cleaning products for many years and have stable market shares. The products under development are unlikely to produce unusual profits for either participant. The participants divide costs on the basis of each participant's current sales of household cleaning products. In this case, the participants' future benefit shares are reliably projected by current sales of cleaning products.

Example 3. The facts are the same as in *Example 2,* except that FS's market share is rapidly expanding because of the business failure of a competitor in its geographic area. The district director determines that the participants' future benefit shares are not reliably projected by current sales of cleaning products and that FS's benefit projections should take into account its growth in sales.

Example 4. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop synthetic fertilizers and insecticides. FP and USS share costs on the basis of each participant's current sales of fertilizers and insecticides. The market shares of the participants have been stable for fertilizers, but FP's market share for insecticides has been expanding. The district director determines that the participants' projections of benefit shares are reliable with regard to fertilizers, but not reliable with regard to insecticides; a more reliable projection of benefit shares would take into account the expanding market share for insecticides.

Example 5. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new food products, dividing costs on the basis of projected sales two years in the future. In year 1, USP and FS project that their sales in year 3 will be equal, and they divide costs accordingly. In year 3, the district director examines the participants' method for dividing costs. USP and FS actually accounted for 42% and 58% of total sales, respectively. The district director agrees that sales two years in the future provide a reliable basis for estimating benefit shares. Because the differences between USP's and FS's actual and projected benefit shares are less than 20% of their projected benefit shares, the projection of future benefits for year 3 is reliable.

Example 6. The facts are the same as in *Example 5,* except that the in year 3 USP and FS actually accounted for 35% and 65% of total sales, respectively. The divergence between USP's projected and actual benefit shares is greater than 20% of USP's projected benefit share and is not due to an extraordinary event beyond the control of the participants. The district director concludes that the projection of anticipated benefit shares was unreliable, and uses actual benefits as the basis for an adjustment to the cost shares borne by USP and FS.

Example 7. U.S. Parent (USP), a U.S. corporation, and its foreign subsidiary (FS) enter a cost sharing arrangement in year 1. They project that they will begin to receive benefits from covered intangibles in years 4 through 6, and that USP will receive 60% of total benefits and FS 40% of total benefits. In years 4 through 6, USP and FS actually receive 50% each of the total benefits. In evaluating the reliability of the participants' projections, the district director compares these actual benefit shares to the projected benefit shares. Although USP's actual benefit share (50%) is within 20% of its projected benefit share (60%), FS's actual benefit share (50%) is not within 20% of its projected benefit share (40%). Based on this discrepancy, the district director may conclude that the participants' projections were not reliable and may use actual benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 8. Three controlled taxpayers, USP, FS1 and FS2 enter into a cost sharing arrangement. FS1 and FS2 are foreign. USP is a United States corporation that controls all the stock of FS1 and FS2. The participants project that they will share the total benefits of the covered intangibles in the following percentages: USP 50%; FS1 30%; and FS2 20%. Actual benefit shares are as follows: USP 45%; FS1 25%; and FS2 30%. In evaluating the reliability of the participants' projections, the district director compares these actual benefit shares to the projected benefit shares. For this purpose, FS1 and FS2 are treated as a single participant. The actual benefit share received by USP (45%) is within 20% of its projected benefit share

(50%). In addition, the non-US participants' actual benefit share (55%) is also within 20% of their projected benefit share (50%). Therefore, the district director concludes that the participants' projections of future benefits were reliable, despite the fact that FS2's actual benefit share (30%) is not within 20% of its projected benefit share (20%).

Example 9. The facts are the same as in *Example 8.* In addition, the district director determines that FS2 has significant operating losses and has no earnings and profits, and that FS1 is profitable and has earnings and profits. Based on all the evidence, the district director concludes that the participants arranged that FS1 would bear a larger cost share than appropriate in order to reduce FS1's earnings and profits and thereby reduce inclusions USP otherwise would be deemed to have on account of FS1 under subpart F. Pursuant to § 1.482–7 (f)(3)(iv)(C), the district director may make an adjustment solely to the cost shares borne by FS1 and FS2 because FS2's projection of future benefits was unreliable and the variation between actual and projected benefits had the effect of substantially reducing USP's U.S. income tax liability (on account of FS1 subpart F income).

Example 10. (i)(A) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement in 1996 to develop a new treatment for baldness. USS's interest in any treatment developed is the right to produce and sell the treatment in the U.S. market while FP retains rights to produce and sell the treatment in the rest of the world. USS and FP measure their anticipated benefits from the cost sharing arrangement based on their respective projected future sales of the baldness treatment. The following sales projections are used:

SALES

[In millions of dollars]

Year	USS	FP
1997	5	10
1998	20	20
1999	30	30
2000	40	40
2001	40	40
2002	40	40
2003	40	40
2004	20	20
2005	10	10
2006	5	5

(B) In 1997, the first year of sales, USS is projected to have lower sales than FP due to lags in U.S. regulatory approval for the baldness treatment. In each subsequent year USS and FP are projected to have equal sales. Sales are projected to build over the first three years of the period, level off for several years, and then decline over the final years of the period as new and improved baldness treatments reach the market.

(ii) To account for USS's lag in sales in the first year, the present discounted value of sales over the period is used as the basis for measuring benefits. Based on the risk associated with this venture, a discount rate of 10 percent is selected. The present discounted value of projected sales is determined to be approximately $154.4 million for USS and $158.9 million for FP. On this basis USS and FP are projected to obtain approximately 49.3% and 50.7% of the benefit, respectively, and the costs of developing the baldness treatment are shared accordingly.

(iii) (A) In the year 2002 the district director examines the cost sharing arrangement. USS and FP have obtained the following sales results through the year 2001:

SALES

[In millions of dollars]

Year	USS	FP
1997	0	17
1998	17	35
1999	25	41
2000	38	41
2001	39	41

(B) USS's sales initially grew more slowly than projected while FP's sales grew more quickly. In each of the first three years of the period the share of total sales of at least one of the parties diverged by over 20% from its projected share of sales. However, by the year 2001 both parties' sales had leveled off at approximately their projected values. Taking into account this leveling off of sales and all the facts and circumstances, the district director determines that it is appropriate to use the original projections for the remaining years of sales. Combining the actual results through the year 2001 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $141.6 million for USS and $187.3 million for FP. This result implies that USS and FP obtain approximately 43.1% and 56.9%, respectively, of the anticipated benefits from the baldness treatment. Because these benefit shares are within 20% of the benefit shares calculated based on the original sales projections, the district director determines that, based on the difference between actual and projected benefit shares, the original projections were not unreliable. No adjustment is made based on the difference between actual and projected benefit shares.

Example 11. (i) The facts are the same as in *Example 10,* except that the actual sales results through the year 2001 are as follows:

SALES

[In millions of dollars]

Year	USS	FP
1997	0	17
1998	17	35
1999	25	44
2000	34	54
2001	36	55

(ii) Based on the discrepancy between the projections and the actual results and on consideration of all the facts, the district director determines that for the remaining years the following sales projections are more reliable than the original projections:

SALES

[In millions of dollars]

Year	USS	FP
2002	36	55
2003	36	55
2004	18	28
2005	9	14
2006	4.5	7

(iii) Combining the actual results through the year 2001 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $131.2 million for USS and $229.4 million for FP. This result implies that USS and FP obtain approximately 35.4% and 63.6%, respectively, of the anticipated benefits from the baldness treatment. These benefit shares diverge by greater than 20% from the benefit shares calculated based on the original sales projections, and the district director determines that, based on the difference between actual and projected benefit shares, the original projections were unreliable. The district director adjusts costs shares for each of the taxable years under examination to conform them to the recalculated shares of anticipated benefits.

(4) *Timing of allocations.* If the district director reallocates costs under the provisions of this paragraph (f), the allocation must be reflected for tax purposes in the year in which the costs were incurred. When a cost sharing payment is owed by one member of a qualified cost sharing arrangement to another member, the district director may make appropriate allocations to reflect an arm's length rate of interest for the time value of money, consistent with the provisions of § 1.482–2(a) (Loans or advances).

(g) *Allocations of income, deductions or other tax items to reflect transfers of intangibles (buy-in)*—(1) *In general.* A controlled participant that makes intangible property available to a qualified cost sharing arrangement will be treated as having transferred interests in such property to the other controlled participants, and such other controlled participants must make buy-in payments to it, as provided in paragraph (g)(2) of this section. If the other controlled participants fail to make such payments, the district director may make appropriate allocations, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to reflect an arm's length consideration for the transferred intangible property. Further, if a group of controlled taxpayers participates in a qualified cost sharing arrangement, any change in the controlled participants' interests in covered intangibles, whether by reason of entry of a new participant or otherwise by reason of transfers (including deemed transfers) of interests among existing participants, is a transfer

of intangible property, and the district director may make appropriate allocations, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to reflect an arm's length consideration for the transfer. See paragraphs (g) (3), (4), and (5) of this section. Paragraph (g)(6) of this section provides rules for assigning unassigned interests under a qualified cost sharing arrangement.

(2) *Pre-existing intangibles.* If a controlled participant makes pre-existing intangible property in which it owns an interest available to other controlled participants for purposes of research in the intangible development area under a qualified cost sharing arrangement, then each such other controlled participant must make a buy-in payment to the owner. The buy-in payment by each such other controlled participant is the arm's length charge for the use of the intangible under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, multiplied by the controlled participant's share of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section). A controlled participant's payment required under this paragraph (g)(2) is deemed to be reduced to the extent of any payments owed to it under this paragraph (g)(2) from other controlled participants. Each payment received by a payee will be treated as coming pro rata out of payments made by all payors. See paragraph (g)(8), *Example 4,* of this section. Such payments will be treated as consideration for a transfer of an interest in the intangible property made available to the qualified cost sharing arrangement by the payee. Any payment to or from an uncontrolled participant in consideration for intangible property made available to the qualified cost sharing arrangement will be shared by the controlled participants in accordance with their shares of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section). A controlled participant's payment required under this paragraph (g)(2) is deemed to be reduced by such a share of payments owed from an uncontrolled participant to the same extent as by any payments owed from other controlled participants under this paragraph (g)(2). See paragraph (g)(8), *Example 5,* of this section.

(3) *New controlled participant.* If a new controlled participant enters a qualified cost sharing arrangement and acquires any interest in the covered intangibles, then the new participant must pay an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, for such interest to each controlled participant from whom such interest was acquired.

(4) *Controlled participant relinquishes interests.* A controlled participant in a qualified cost sharing arrangement may be deemed to have acquired an interest in one or more covered intangibles if another controlled participant transfers, abandons, or otherwise relinquishes an interest under the arrangement, to the benefit of the first participant. If such a relinquishment occurs, the participant relinquishing the interest must receive an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, for its interest. If the controlled participant that has relinquished its interest subsequently uses that interest, then that participant must pay an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to the controlled participant that acquired the interest.

(5) *Conduct inconsistent with the terms of a cost sharing arrangement.* If, after any cost allocations authorized by paragraph (a)(2) of this section, a controlled participant bears costs of intangible development that over a period of years are consistently and materially greater or lesser than its share of reasonably anticipated benefits, then the district director may conclude that the economic substance of the arrangement between the controlled participants is inconsistent with the terms of the cost sharing arrangement. In such a case, the district director may disregard such terms and impute an agreement consistent with the controlled participants' course of conduct, under which a controlled participant that bore a disproportionately greater share of costs received additional interests in covered intangibles. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms) and § 1.482- 4(f)(3)(ii) (Identification of owner). Accordingly, that participant must receive an arm's length payment from any controlled participant whose share of the intangible development costs is less than its share of reasonably anticipated benefits over time, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6.

(6) *Failure to assign interests under a qualified cost sharing arrangement.* If a qualified cost sharing arrangement fails to assign an interest in a covered intangible, then each controlled participant will be deemed to hold a share in such interest equal to its share of the costs of developing such intangible. For this purpose, if cost shares have varied materially over the period during which such intangible was developed, then the costs of developing the intangible must be measured by their present discounted value as of the date when the first such costs were incurred.

(7) *Form of consideration.* The consideration for an acquisition described in this paragraph (g) may take any of the following forms:

(i) *Lump sum payments.* For the treatment of lump sum payments, see § 1.482–4(f)(5) (Lump sum payments);

(ii) *Installment payments.* Installment payments spread over the period of use of the intangible by the transferee, with interest calculated in accordance with § 1.482–2(a) (Loans or advances); and

(iii) *Royalties.* Royalties or other payments contingent on the use of the intangible by the transferee.

(8) *Examples.* The following examples illustrate allocations described in this paragraph (g):

Example 1. In year one, four members of a controlled group enter into a cost sharing arrangement to develop a commercially feasible process for capturing energy from nuclear fusion. Based on a reliable projection of their future benefits, each cost sharing participant bears an equal share of the costs. The cost of developing intangibles for each participant with respect to the project is approximately $1 million per year. In year ten, a fifth member of the controlled group joins the cost sharing group and agrees to bear one-fifth of the future costs in exchange for part of the fourth member's territory reasonably anticipated to yield benefits amounting to one-fifth of the total benefits. The fair market value of intangible property within the arrangement at the time the fifth company joins the arrangement is $45 million. The new member must pay one-fifth of that amount (that is, $9 million total) to the fourth member from whom it acquired its interest in covered intangibles.

Example 2. U.S. Subsidiary (USS), Foreign Subsidiary (FS) and Foreign Parent (FP) enter into a cost sharing arrangement to develop new products within the Group X product line. USS manufactures and sells Group X products in North America, FS manufactures and sells Group X products in South America, and FP manufactures and sells Group X products in the rest of the world. USS, FS and FP project that each will manufacture and sell a third of the Group X products under development, and they share costs on the basis of projected sales of manufactured products. When the new Group X products are developed, however, USS ceases to manufacture Group X products, and FP sells its Group X products to USS for resale in the North American market. USS earns a return on its resale activity that is appropriate given its function as a distributor, but does not earn a return attributable to exploiting covered intangibles. The district director determines that USS' share of the costs (one-third) was greater than its share of reasonably anticipated benefits (zero) and that it has transferred an interest in the intangibles for which it should receive a payment from FP, whose share of the

intangible development costs (one-third) was less than its share of reasonably anticipated benefits over time (two-thirds). An allocation is made under §§ 1.482–1 and 1.482–4 through 1.482–6 from FP to USS to recognize USS' one-third interest in the intangibles. No allocation is made from FS to USS because FS did not exploit USS' interest in covered intangibles.

Example 3. U.S. Parent (USP), Foreign Subsidiary 1 (FS1), and Foreign Subsidiary 2 (FS2) enter into a cost sharing arrangement to develop a cure for the common cold. Costs are shared USP–50%, FS1–40% and FS2–10% on the basis of projected units of cold medicine to be produced by each. After ten years of research and development, FS1 withdraws from the arrangement, transferring its interests in the intangibles under development to USP in exchange for a lump sum payment of $10 million. The district director may review this lump sum payment, under the provisions of § 1.482–4(f)(5), to ensure that the amount is commensurate with the income attributable to the intangibles.

Example 4. (i) Four members A, B, C, and D of a controlled group form a cost sharing arrangement to develop the next generation technology for their business. Based on a reliable projection of their future benefits, the participants agree to bear shares of the costs incurred during the term of the agreement in the following percentages: A 40%; B 15%; C 25%; and D 20%. The arm's length charges, under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, for the use of the existing intangible property they respectively make available to the cost sharing arrangement are in the following amounts for the taxable year: A 80X; B 40X; C 30X; and D 30X. The provisional (before offsets) and final buy-in payments/receipts among A, B, C, and D are shown in the table as follows:

[All amounts stated in X's]

	A	B	C	D
Payments	<40>	<21>	<37.5>	<30>
Receipts	48	34	22.5	24
Final	8	13	<15>	<6>

(ii) The first row/first column shows A's provisional buy-in payment equal to the product of 100X (sum of 40X, 30X, and 30X) and A's share of anticipated benefits of 40%. The second row/first column shows A's provisional buy-in receipts equal to the sum of the products of 80X and B's, C's, and D's anticipated benefits shares (15%, 25%, and 20%, respectively). The other entries in the first two rows of the table are similarly computed. The last row shows the final buy-in receipts/payments after offsets. Thus, for the taxable year, A and B are treated as receiving the 8X and 13X, respectively, pro rata out of payments by C and D of 15X and 6X, respectively.

Example 5. A and B, two members of a controlled group form a cost sharing arrangement with an unrelated third party C to develop a new technology useable in their respective businesses. Based on a reliable projection of their future benefits, A and B agree to bear shares of 60% and 40%, respectively, of the costs incurred during the term of the agreement. A also makes available its existing technology for purposes of the research to be undertaken. The arm's length charge, under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, for the use of the existing technology is 100X for the taxable year. Under its agreement with A and B, C must make a specified cost sharing payment as well as a payment of 50X for the taxable year on account of the pre- existing intangible property made available to the cost sharing arrangement. B's provisional buy-in payment (before offsets) to A for the taxable year is 40X (the product of 100X and B's anticipated benefits share of 40%). C's payment of 50X is shared provisionally between A and B in accordance with their shares of reasonably anticipated benefits, 30X (50X times 60%) to A and 20X (50X times 40%) to B. B's final buy-in payment (after offsets) is 20X (40X less 20X). A is treated as receiving the 70X total provisional payments (40X plus 30X) pro rata out of the final payments by B and C of 20X and 50X, respectively.

(h) *Character of payments made pursuant to a qualified cost sharing arrangement*—(1) *In general.* Payments made pursuant to a qualified cost sharing arrangement (other than payments described in paragraph (g) of this section) generally will be considered costs of developing intangibles of the payor and reimbursements of the same kind of costs of developing intangibles of the payee. For purposes of this paragraph (h), a controlled participant's payment required under a qualified cost sharing arrangement is deemed to be reduced to the extent of any payments owed to it under the arrangement from other controlled or uncontrolled participants. Each payment received by a payee will be treated as coming pro rata out of payments made by all payors. Such payments will be applied pro rata against deductions for the taxable year that the payee is allowed in connection with the qualified cost sharing arrangement. Payments received in excess of such deductions will be treated as in consideration for use of the tangible property made available to the qualified cost sharing arrangement by the payee. For purposes of the research credit determined under section 41, cost sharing payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–8(e). Any payment made or received by a taxpayer pursuant to an arrangement that the district director determines not to be a qualified cost sharing arrangement, or a payment made or received pursuant to paragraph (g) of this section, will be subject to the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6. Any payment that in substance constitutes a cost sharing payment will be treated as such for purposes of this section, regardless of its characterization under foreign law.

(2) *Examples.* The following examples illustrate this paragraph (h):

Example 1. U.S. Parent (USP) and its wholly owned Foreign Subsidiary (FS) form a cost sharing arrangement to develop a miniature widget, the Small R. Based on a reliable projection of their future benefits, USP agrees to bear 40% and FS to bear 60% of the costs incurred during the term of the agreement. The principal costs in the intangible development area are operating expenses incurred by FS in Country Z of 100X annually, and operating expenses incurred by USP in the United States also of 100X annually. Of the total costs of 200X, USP's share is 80X and FS's share is 120X, so that FS must make a payment to USP of 20X. This payment will be treated as a reimbursement of 20X of USP's operating expenses in the United States. Accordingly, USP's Form 1120 will reflect an 80X deduction on account of activities performed in the United States for purposes of allocation and apportionment of the deduction to source. The Form 5471 for FS will reflect a 100X deduction on account of activities performed in Country Z, and a 20X deduction on account of activities performed in the United States.

Example 2. The facts are the same as in *Example 1,* except that the 100X of costs borne by USP consist of 5X of operating expenses incurred by USP in the United States and 95X of fair market value rental cost for a facility in the United States. The depreciation deduction attributable to the U.S. facility is 7X. The 20X net payment by FS to USP will first be applied in reduction pro rata of the 5X deduction for operating expenses and the 7X depreciation deduction attributable to the U.S. facility. The 8X remainder will be treated as rent for the U.S. facility.

(i) *Accounting requirements.* The accounting requirements of this paragraph are that the controlled

participants in a qualified cost sharing arrangement must use a consistent method of accounting to measure costs and benefits, and must translate foreign currencies on a consistent basis.

(j) *Administrative requirements*—(1) *In general.* The administrative requirements of this paragraph consist of the documentation requirements of paragraph (j)(2) of this section and the reporting requirements of paragraph (j)(3) of this section.

(2) *Documentation.* A controlled participant must maintain sufficient documentation to establish that the requirements of paragraphs (b)(4) and (c)(1) of this section have been met, as well as the additional documentation specified in this paragraph (j)(2), and must provide any such documentation to the Internal Revenue Service within 30 days of a request (unless an extension is granted by the district director). Documents necessary to establish the following must also be maintained—

(i) The total amount of costs incurred pursuant to the arrangement;

(ii) The costs borne by each controlled participant;

(iii) A description of the method used to determine each controlled participant's share of the intangible development costs, including the projections used to estimate benefits, and an explanation of why that method was selected;

(iv) The accounting method used to determine the costs and benefits of the intangible development (including the method used to translate foreign currencies), and, to the extent that the method materially differs from U.S. generally accepted accounting principles, an explanation of such material differences; and

(v) Prior research, if any, undertaken in the intangible development area, any tangible or intangible property made available for use in the arrangement, by each controlled participant, and any information used to establish the value of pre-existing and covered intangibles.

(3) *Reporting requirements.* A controlled participant must attach to its U.S. income tax return a statement indicating that it is a participant in a qualified cost sharing arrangement, and listing the other controlled participants in the arrangement. A controlled participant that is not required to file a U.S. income tax return must ensure that such a statement is attached to Schedule M of any Form 5471 or to any Form 5472 filed with respect to that participant.

(k) *Effective date.* This section is effective for taxable years beginning on or after January 1, 1996.

(l) *Transition rule.* A cost sharing arrangement will be considered a qualified cost sharing arrangement, within the meaning of this section, if, prior to January 1, 1996, the arrangement was a bona fide cost sharing arrangement under the provisions of § 1.482–7T (as contained in the 26 CFR part 1 edition revised as of April 1, 1995), but only if the arrangement is amended, if necessary, to conform with the provisions of this section by December 31, 1996.

§ 1.482–7T [Removed]

Par. 4. Section 1.482–7T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 6. Section 301.7701–3 is amended by adding paragraph (e) to read as follows:

§ 301.7701–3 Partnerships.

* * * * *

(e) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482–7 of this chapter and any arrangement that is treated by the Service as a qualified cost sharing arrangement under § 1.482–7 of this chapter is not classified as a partnership for purposes of the Internal Revenue Code. See § 1.482–7 of this chapter for the proper treatment of qualified cost sharing arrangements.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

''1.482–7 .....1545–1364''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 30, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30617 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 53

[TD 8639]

RIN 1545–AT03

Excise Tax On Self-Dealing By Private Foundations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of self-dealing for private foundations. These regulations modify the application of the self-dealing rules to the provision by a private foundation of directors' and officers' liability insurance to disqualified persons. In general, these regulations provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in his/her capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation for insurance or indemnification generally are not included in the compensation of the disqualified person for purposes of determining whether the disqualified person's compensation is reasonable.

DATES: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995 proposed regulations amending § 53.4941(d)–2(f) [EE–56–94, 1995–6 I.R.B. 39] under section 4941 of the Internal Revenue Code of 1986 were published in the Federal Register (60 FR 82). The proposed regulations provided that generally it would not be self-dealing, nor treated as the payment of compensation, if a private foundation were to indemnify or provide insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation. After IRS and Treasury consideration of the public comments received regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 4941(a) imposes a tax on each act of self-dealing between a

disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Prior to this Treasury decision, § 53.4941(d)–2(f)(1) provided that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager was self- dealing unless the premium amounts were included in the compensation of the foundation manager. The payment of chapter 42 taxes by the private foundation on behalf of the foundation manager was self-dealing whether or not the amounts were included in the manager's compensation.

Section 53.4941(d)–2(f)(3) provided that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes was not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must have been successful in such defense, or such proceeding must have been terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

This Treasury decision expands the scope of the regulations to cover indemnification and insurance payments made by a private foundation to or on behalf of a foundation manager in connection with any civil proceeding arising from the manager's performance of services for the private foundation. The regulations also clarify the distinction between the treatment of indemnification and insurance payments under chapter 42 and the treatment of these same items for income tax purposes.

The proposed regulations resulted in some confusion as to whether certain indemnification and insurance payments would be considered compensatory or non-compensatory. The final regulations have been revised to provide greater clarity. They divide indemnification payments and insurance coverage into non-compensatory and compensatory categories, described comprehensively in § 53.4941(d)–2(f) (3) and (4). The second and third sentences of § 53.4941(d)–2(f)(1) of the proposed regulations have been removed because their substance was incorporated into § 53.4941(d)–2(f)(4). Generally, the non-compensatory category includes indemnification and insurance payments that cover expenses reasonably incurred in proceedings that do not result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as expenses for the foundation's administration and operation rather than compensation for the manager's services. The compensatory category includes indemnification or insurance payments that cover taxes (including taxes imposed by chapter 42), penalties or expenses of correction, expenses that were not reasonably incurred, or expenses for proceedings that result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as being exclusively for the benefit of the manager, not the foundation.

The regulations provide that non-compensatory indemnification and insurance payments are not affected by the prohibition against self-dealing. Conversely, compensatory indemnification and insurance payments are considered acts of self-dealing unless they are added to the benefiting manager's total compensation for purposes of determining whether that compensation is reasonable. If the total compensation is not reasonable, the foundation will have engaged in an act of self-dealing.

In some instances, a foundation may purchase an insurance policy that provides both non-compensatory and compensatory coverage. Some commentators have recommended that no allocation of insurance premiums be required when a single policy of this sort is purchased. These commentators argue that the allocation requirement places an undue burden on private foundations. After careful consideration, the IRS and the Treasury Department have decided to retain the allocation provision in the final regulations. The self-dealing rules were meant to discourage foundations from relieving managers of penalties, taxes and expenses of correction, as well as expenses ultimately resulting from the manager's willful violation of the law. A rule that did not require an allocation to determine whether the disqualified person's compensation is reasonable for purposes of chapter 42 could have the opposite effect. The insurance allocation rules are now set forth in § 53.4941(d)–2(f)(5).

Some commentators requested a clearer statement of what is meant by the statement that indemnification or insurance premiums are to be treated as compensation to the benefiting foundation manager. The IRS and the Treasury Department agree that further clarification is desirable. Accordingly, § 53.4941(d)–2(f)(7) has been added. It provides that treatment as compensation for the limited purpose of determining whether compensation is reasonable under chapter 42 is separate and distinct from treatment as income to the benefiting manager under the income tax provisions. Whether any amount of indemnification or insurance is included in the manager's gross income for individual income tax purposes is determined in accordance with section 132, without regard to the treatment of such amounts under chapter 42.

Finally, a provision has been added to the regulations specifying that a foundation may disregard de minimis benefits when calculating the total amount of compensation paid to an officer, director or foundation manager for purposes of determining whether that compensation is reasonable. In this context, a de minimis benefit is one excluded from gross income under section 132(a)(4). This provision makes explicit a Service position that has previously been reflected in the instructions to the Form 990–PF.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.4941(d)–2 is amended as follows:

1. Paragraph (f)(1) is amended by removing the second and third sentences and revising the fourth sentence.
2. Paragraph (f)(3) is revised.
3. Paragraph (f)(4) is redesignated as paragraph (f)(9).
4. New paragraphs (f)(4) through (f)(8) are added.

The additions and revisions read as follows:

§ 53.4941(d)–2 Specific acts of self-dealing.

* * * * *

(f) *Transfer or use of the income or assets of a private foundation*—(1) *In general.* * * * For purposes of the preceding sentence, the purchase or sale of stock or other securities by a private foundation shall be an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person. * * *

* * * * *

(3) *Non-compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) Except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services (or failure to perform services) on behalf of the foundation, against all expenses (other than taxes, including taxes imposed by chapter 42, penalties, or expenses of correction) including attorneys' fees, judgments and settlement expenditures if—

(A) Such expenses are reasonably incurred by the manager in connection with such proceeding; and

(B) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.

(ii) Similarly, except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to premiums for insurance to make or to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3). Neither shall an indemnification or payment of insurance allowed pursuant to this paragraph (f)(3) be treated as part of the compensation paid to such manager for purposes of determining whether the compensation is reasonable under chapter 42.

(4) *Compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) The indemnification by a private foundation of a foundation manager for compensatory expenses shall be an act of self-dealing under this paragraph unless when such payment is added to other compensation paid to such manager the total compensation is reasonable under chapter 42. A compensatory expense for purposes of this paragraph (f) is—

(A) Any penalty, tax (including a tax imposed by chapter 42), or expense of correction that is owed by the foundation manager;

(B) Any expense not reasonably incurred by the manager in connection with a civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation; or

(C) Any expense resulting from an act or failure to act with respect to which the manager has acted willfully and without reasonable cause.

(ii) Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for expenses described in this paragraph (f)(4) shall be an act of self-dealing under this paragraph (f) unless when such premiums are added to other compensation paid to such manager the total compensation is reasonable under chapter 42.

(5) *Insurance Allocation.* A private foundation shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated and that each manager's portion of the premium attributable to the compensatory coverage is included in that manager's compensation for purposes of determining reasonable compensation under chapter 42.

(6) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for expenses that the foundation manager has already incurred or anticipates incurring but also direct payment by the foundation of such expenses as the expenses arise.

(7) *Taxable Income.* The determination of whether any amount of indemnification or insurance premium discussed in this paragraph (f) is included in the manager's gross income for individual income tax purposes is made on the basis of the provisions of chapter 1 and without regard to the treatment of such amount for purposes of determining whether the manager's compensation is reasonable under chapter 42.

(8) *De minimis items.* Any property or service that is excluded from income under section 132(a)(4) may be disregarded for purposes of determining whether the recipient's compensation is reasonable under chapter 42.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,
Assistant Secretary of Treasury.

[FR Doc. 95–30838 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 390

Collection By Administrative Offset

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Title 31 by removing Part 390. The action is being taken because the Treasury Department's promulgation of administrative offset regulations at 31 CFR Part 5, Subpart D, made Part 390 unnecessary.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ed Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, Parkersburg, WV (304) 480–5187.

SUPPLEMENTARY INFORMATION:

Background

Part 390 applied to the collection of claims by administrative offset by the Bureau of the Public Debt. The rule was needed to implement the administrative offset provisions of section 10 of the Debt Collection Act of 1982, (31 U.S.C. 3716). Subsequent to the adoption of this rule, the Department of the Treasury promulgated Department-wide

administrative offset regulations at 31 CFR Part 5, Subpart D.

Procedural Requirements

This final rule is not a ''significant regulatory action'' pursuant to Executive Order 12866. This final rule merely removes a redundancy from existing Department of the Treasury regulations. Accordingly, notice and public procedure thereon is unnecessary. Pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective upon publication. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 390

Administrative practice and procedure, Claims.

Accordingly, under the authority of 5 U.S.C. 301, 31 CFR chapter II is hereby amended by removing part 390.

PART 390—[REMOVED]

1. Part 390 is removed.

Dated: December 7, 1995.

Van Zeck,

Acting Commissioner of the Public Debt.

[FR Doc. 95–30780 Filed 12–19–95; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BLACK HAWK (MHC 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BLACK HAWK (MHC 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mine clearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding the following ship to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
* * * *	*	*	*
Black hawk	MHC 58	65.0° to 75.6°	284.1° to 294.6°.

Dated: November 30, 1995.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–30720 Filed 12–19–95; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS OAK HILL (LSD 51) is a vessel of the Navy which, due to its special construction and purpose,

cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OAK HILL (LSD 51) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of 706.2 is amended by adding the following vessel:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal sepaation attained.
	*	*	*	*	*
USS Oak Hill	LSD 51	.....	.....	X	63.9
	*	*	*	*	*

Dated: November 30, 1995.

R. R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–30721 Filed 12–19–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville Regulation 93–115]

RIN 2115–AA97

Security Zone Regulations; Naval Air Station Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing an existing security zone on the St. Johns river, Jacksonville, Florida, and establishing a security zone for the waters surrounding Naval Air Station Jacksonville, Florida. The change will delete an existing security zone for the north bank of the St. Johns river at the junction of Brills Cut Range and Broward Point Turn, known as Dunn Creek Terminal. The change also establishes a security zone around Naval Air Station Jacksonville to safeguard sensitive military assets on the facility. No person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida.

EFFECTIVE DATES: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: LT E.W. Heinold, Coast Guard Marine Safety Office Jacksonville, Florida at (904) 232–2957.

SUPPLEMENTARY INFORMATION: On May 19, 1994, the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (59 FR 26155). Interested persons were requested to submit comments and no comments were received. One minor correction has been made since the notice of proposed rulemaking; the proposed section, § 165.709 will now read § 165.722. This correction will allow this regulation to be located in Title 33 Code of Federal Regulations (CFR) with other regulations for the MSO Jacksonville area of responsibility. As a matter of general interest the Coast Guard notes that this final regulation provides, that no person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida. Title 33 CFR 6.04–11 authorizes the Captain of the Port to enlist the aid and cooperation of Federal, State, county, municipal, and private agencies to assist in the enforcement of regulations issued pursuant to that part. The Captain of the Port of Jacksonville advises that the aid and cooperation of the Commanding Officer, Naval Air Station Jacksonville, FL has been enlisted to assist in the enforcement of this security zone.

Drafting Information

The drafters of these regulations are LT E.W. Heinold, project officer for the Captain of the Port Jacksonville, Florida and LTJG J. Diaz, project attorney, Seventh Coast Guard District Legal Office.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations consistent with section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B and the establishment of a security zone has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Recreational use of the area will be affected. The security zone will extend 400 feet from the shoreline and the depth of water in this area is such that commercial traffic will not be affected.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

§ 165.710 [Removed]

2. Section 165.710 is removed.

3. Section 165.722 is added to read as follows:

§ 165.722 Security Zone: St. Johns River, Jacksonville, Florida.

(a) Location. The water located within the following area is established as a security zone: beginning at the shoreline of the St. Johns River at the northernmost property line of Naval Air Station Jacksonville next to Timuquana Country Club, at 30°14′39.5″ N, 81°40′45″ W; thence northeasterly to 30°14′42″ N, 81°40′42″ W; thence south remaining 400 feet from the shoreline at mean high water; thence past Piney Point and Black Point to the northern edge of Mulberry Cover Manatee refuge, 400 feet from Naval Air Station Jacksonville boat ramp, at 30°13′00″ N, 81°40′23.5″ W; thence southwesterly in a straight line to position 30°12′14″ N, 81°40′42″ W; thence southerly, remaining 400′ seaward of the mean high water shoreline to 30°11′40″ N, 81°41′15.5″ W; thence northwest to the point at the end of the property line of Naval Air Station Jacksonville just north of the Buckman Bridge at position 30°11′42.30″ N, 81°41′23.66″ W; thence northeasterly along the mean high water shoreline of the St. Johns River and Mulberry Cove to the point of beginning. Datum: NAD 83

(b) In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida. All other portions of § 165.33 remain applicable.

(c) This regulation does not apply to Coast Guard vessels and authorized law enforcement vessels operating within the Security Zone.

Dated: December 8, 1995.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 95–30968 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5399–9]

Regulation of Fuels and Fuel Additives: Modification of Reformulated and Conventional Gasoline Regulations—Treatment of Business Information Submitted Concerning Individual Baselines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, as amended in 1990 (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) promulgated anti-dumping regulations for conventional gasoline (gasoline not certified as reformulated gasoline (RFG)). These regulations require that conventional gasoline not be more polluting than it was in 1990 and include provisions for the development of individual refinery baselines and other compliance provisions. Today's action modifies the regulations concerning the publication and confidentiality of individual baselines and information submitted to obtain an individual baseline.

DATES: This final rule is effective December 12, 1995.

ADDRESSES: Materials relevant to this final rule can be found in Public Docket A–95–03; materials relevant to the reformulated gasoline final rule are contained in Public Dockets A–91–02 and A–92–12. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 5 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To Request Copies of This Document Contact: Delores Frank, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this final rule is available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8 AM to 12 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: CBI–FRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

II. Confidentiality of Information Submitted for Individual Baselines

A. Introduction

Compliance with certain aspects of the reformulated and conventional gasoline regulations depends on the individual baseline of the refiner or importer.[1] The final regulations issued by EPA in December 1993 establish requirements for developing an individual baseline which is the set of fuel parameter values, emissions and volumes which represent the quality and quantity of the refiner's 1990 gasoline. See 40 CFR 80.91. The final rule also states that certain information contained in a refiner's baseline submittal would not be considered confidential, and that EPA would publish the individual standards for each refinery, blender or importer upon approval of an individual baseline. See 40 CFR 80.93(b)(6).

Persons affected by this provision sought judicial review, objecting to the release or publication of this information on grounds of business confidentiality. *American Petroleum Institute* v. *U.S. Environmental Protection Agency,* No. 94–1138 (D.C. Cir.), and consolidated case *Texaco, Inc. and Star Enterprises* v. *U.S. Environmental Protection Agency,* No. 94–1143 (D.C. Cir.). Based on discussions with these parties, EPA reconsidered this provision and proposed to revise it.[2] 60 FR 40009, August 4, 1995. Under the proposal, EPA would publish only a portion of the baseline information, representing a refinery's baseline emissions values. Instead of determining by regulation that the remaining baseline information submitted by a refiner is non-confidential, EPA would address claims of business confidentiality for this other baseline information under EPA's regulations on ''Confidentiality of Business Information (CBI),'' 40 CFR part 2 subpart B.

This preamble provides background information on individual baselines and their use, discusses the proposal, and summarizes and responds to the comments received on the proposal. The revisions contained in the August 4, 1995 proposal are finalized as proposed. Refiners may submit to EPA claims of confidentiality on baseline information originally deemed not confidential by the December 1993 rule but for which claims of confidentiality would now be considered under EPA's CBI regulations pursuant to this rulemaking. These claims may be sent to Deborah Adler, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4223.

B. Background

A refiner's individual baseline reflects the volume and average quality of its gasoline for the year 1990. Unlike the standards for reformulated gasoline (which for the most part are the same for all refiners), the standards for conventional gasoline (the anti-dumping standards) are generally expressed in terms of this individual baseline, so that compliance with the standards is measured by comparing current production of conventional gasoline against the individual baseline, on an annual basis. For example, for conventional gasoline under the simple model, a refiner's annual average value for exhaust benzene emissions may not exceed its compliance baseline value for exhaust benzene emissions, and its annual average values for sulfur, olefins and T90 may not exceed 125 percent of its compliance baseline values for these parameters. 40 CFR 80.101(b)(1). In most cases, the compliance baseline is the same as the individual baseline. 40 CFR 80.101(f). For reformulated gasoline, certain standards applicable during 1995 through 1997 are also expressed in terms of a refiner's or importer's individual baseline. 40 CFR 80.41(h)(2).

EPA assigns an individual baseline after reviewing a refiner's baseline submittal. The submittal includes the refiner's estimate of its baseline values for the various required fuel parameters; exhaust emissions values calculated from such parameters; 1990 gasoline volumes; and the blendstock-to-gasoline ratios for 1990 through 1993. Per the December 1993 final rule, this information would not be considered confidential, and EPA would publish, for each refinery or importer, certain baseline exhaust emissions and the sulfur, olefins and T90 standards noted above. 40 CFR 80.93(b)(6).

C. Proposal

In the preamble to the December 1993 regulations, EPA stated that it believed that each refiner's anti-dumping standard should be publicly known. The standards for reformulated gasoline are publicly known, but are generally the same for all refiners. EPA cited several benefits of publishing a refiner's anti-dumping standards (i.e., specific individual baseline information). These included citizen suit enforcement, more information to the public about EPA's standards, and better deterrence to noncompliance.

However, as stated above, objections raised by certain parties regarding publication of baseline information caused EPA to reconsider which information should be published and which information might more appropriately be handled under EPA's CBI regulations. Because EPA was particularly concerned that the emissions standards for refiners continue to be public,[3] it did not propose to change the regulations regarding publication of the individual baseline exhaust emissions values that comprise a refiner's anti-dumping standards. However, EPA did propose that the standards for sulfur, olefins and T90 applicable during 1995 through 1997 not be published and instead that the reporting requirements be revised such that a refiner would have to note whether and how much its annual average for these values exceeded their individual baseline value. This latter

[1] In general, the provisions regarding individual baselines apply to refiners or importers of conventional gasoline. For brevity in this discussion, the term ''refiner'' shall include both refiners and importers.

[2] For a discussion of industry concerns regarding this issue and EPA's rationale behind its proposal, see the support document ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis'', Air Docket A–95–03.

[3] The Act specifies that conventional gasoline emissions cannot be greater than they were in 1990. The simple model requirements for sulfur, olefins and T90 were a result of the Regulatory Negotiation process.

reporting information would be considered non-confidential. EPA stated that this would effectively provide the same benefits as publishing the baseline values for these three parameters as it would clearly show whether and how much a refiner violated the standards applicable for these fuel parameters while preserving valid claims of business confidentiality.

EPA's proposal to change the regulations regarding business confidentiality was based in large part on evidence, presented by interested parties in the oil refining industry, arguing that detailed information regarding the quality of a business' 1990 gasoline production would allow a competitor to calculate the business' current cost of producing reformulated gasoline much more accurately with this baseline information. This increased ability to predict current cost of production would lead to significant adverse competitive harm. According to the interested parties, information on individual baseline fuel parameters (i.e., sulfur, olefins and T90) would have much more adverse competitive impact than information on individual baseline exhaust emission values.

In the proposal, EPA also stated that requests for release of other baseline information would be governed by the regulations on the confidentiality of business information at 40 CFR part 2 subpart B. By deferring to 40 CFR part 2 subpart B, the factual and legal issues concerning disclosure of this information may be resolved on a case-by-case basis under EPA's CBI rules.

D. Summary and Analysis of Comments

EPA received less than ten comments on this issue; most generally supported the proposal. Commenters agreed with EPA that the proposal would properly inform the public of each refiner's standards yet would minimize competitive harm and would protect each refiner's competitive business interests. Commenters also mentioned that foregoing publication of some baseline information does not hinder EPA's ability to enforce the RFG (or anti-dumping) programs. One commenter stated that no negative environmental effects would occur due to the proposed change. EPA agrees with all of these comments.

Commenters also mentioned that indiscriminate publication of baseline data would be contrary to the Agency's stated rationale for establishing the procedures set forth in the CBI regulations. While EPA believes the December 1993 final rule provisions were consistent with the rationale of the Agency's CBI regulations, EPA believes that the changes adopted today are a more appropriate mechanism to implement this rationale. The December 1993 rule was based on the view that all information submitted by a refiner regarding its individual baseline should be considered non-confidential emissions data, and therefore would not be protected from release notwithstanding its claimed confidential nature. See CAA section 114, 208. In the rule adopted today, EPA basically limits this determination to the information that will be published—individual baseline exhaust emission levels. The reporting information that is considered non-confidential does not meet the definition of confidential business information, without addressing whether it is emissions data. The confidentiality of the remaining baseline information will be addressed under EPA's CBI regulations. Instead of pre-determining whether this remaining information is confidential business information or whether it is emissions data, these issues will be resolved as needed on a case-by-case basis under EPA's CBI regulations. This will allow for a case specific inquiry, focusing on any unique aspects that might be specific to a refiner and thereby reducing the risk of improper disclosure. Having reconsidered these issues, especially the competitive harm that could occur if a refiner's entire baseline information were available for release, EPA believes that the alternative contained in the August 1995 proposal and finalized today will retain the benefits of publishing all of a refiner's individual baseline exhaust emission levels while minimizing competitive harm. One commenter stated that with the proposal the regulations now conformed to the CBI rules.

Another commenter stated that the Act exempts only emission data from CBI rules and that the baseline information is not emission data. EPA disagrees with this comment with respect to the individual baseline exhaust emissions levels. With respect to the remaining individual baseline information, the issue of whether it is or is not emissions data is not resolved by this rulemaking, but will be resolved as needed under EPA's CBI regulations.

Several commenters expressed concern about the ability to claim confidentiality now on baseline information not originally marked confidential. For example, under the December 1993 rule baseline values for sulfur, olefins and T90 were not considered confidential, and many baseline submitters may therefore not have claimed that information as confidential. If not allowed to claim confidentiality now, someone could arguably request and receive that information from EPA. However, baseline submitters can, and in fact are encouraged to now submit claims of confidentiality on baseline information that the submitter considers confidential, even though not originally marked confidential. EPA's CBI regulations do not prohibit a company from notifying EPA that it now claims certain previously submitted information as business confidential. See 40 CFR 2.203, 2.204(c). This also addresses the suggestion by one commenter that EPA take precautions in releasing other baseline information. Once a company makes such a claim, EPA's regulations generally call for notifying the company and giving it an opportunity to justify the claim of confidentiality prior to any release of the information to the public.

One commenter was concerned about the public perception of any published information, citing potential pressure (presumably to be cleaner than one's standard) from competitors and non-informed public and the resulting impact on investor support. The commenter implied that this kind of pressure can be especially burdensome if performance margins are tight. This same commenter was particularly concerned about small refiners and stated that big refiners are protected by (the ability to) aggregate baselines. While multi-refinery refiners do have the option to aggregate baselines for compliance purposes, publication of baseline information is on a refinery basis, and multi-refinery refiners have no advantage over single-refinery refiners in that regard. This commenter also implicitly suggested that EPA consider relaxing the publication requirements for small refiners since EPA has determined that the contribution to emissions of small refiners is minimal to the point of relaxing some requirements. However, the issue of when and under what conditions to allow for baseline adjustments is a separate issue. Whether or not a refiner meets such criteria, EPA believes there is a continuing value in publishing the applicable standards, including standards based on baseline adjustments. This value, described above, occurs whether the business is small or large. There is also no indication that the business pressures noted by this commenter are greater for small businesses.

E. Final Rule

EPA today finalizes the provisions regarding the confidentiality of information submitted for individual

baselines and the publication of certain baseline information as proposed in the August 4, 1995 Federal Register (60 FR 40009). The applicable regulations have been modified slightly from the proposal. Specifically, in § 80.75, the proposed additional paragraphs (H), (I) and (J) have been re-ordered to paragraphs (D), (G) and (J) in today's rulemaking. By re-ordering these paragraphs, all paragraphs in § 80.75(b)(2)(ii) referring to a specific fuel parameter, e.g., sulfur, are grouped together, for benefit of the reader. Section 80.105 has also been modified from the proposal, and now requires that a refiner's or importer's simple model standards for conventional gasoline be reported (in addition to the requirements contained in the December 1993 final rule and those contained in the proposal being finalized today). This minor revision results in similar reporting requirements for both reformulated and conventional gasoline under the simple model.

III. Environmental and Economic Impacts

No environmental impacts are expected as a result of today's action. Economic impacts should be generally beneficial to refiners as one purpose of this action is to reduce any adverse competitive harm that could occur without this change. The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

IV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's action is designed to minimize any adverse competitive impacts since only individual baseline exhaust emissions, and not individual baseline fuel parameters values, will be published. Additionally, by this action, less baseline information will automatically be deemed non-confidential.

V. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the executive order. The Order defines ''significant regulatory action as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action''.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Unfunded Mandates Reform Act

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 expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VIII. Statutory Authority

The statutory authority for this action is granted to EPA by Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

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

Dated: December 12, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.75 is amended by revising the heading for paragraph (b)(2), and by revising paragraphs (b)(2)(ii)(D) through (G), and adding paragraphs (b)(2)(ii) (H) through (J) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(b) * * *

(2) *Sulfur, olefins and T90 averaging reports.*

(i) * * *

(ii) * * *

(D) The difference between the applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million and the average sulfur content under paragraph (b)(2)(ii)(C) of this section in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(E) The applicable olefin content standard under § 80.41(h)(2)(i) in volume percent;

(F) The average olefin content in volume percent;

(G) The difference between the applicable olefin content standard under § 80.41(h)(2)(i) in volume percent and the average olefin content under paragraph (b)(2)(ii)(F) of this section in volume percent, indicating whether the

average is greater or lesser than the applicable standard;

(H) The applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit;

(I) The average T90 distillation point in degrees Fahrenheit; and

(J) The difference between the applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit and the average T90 distillation point under paragraph (b)(2)(ii)(I) of this section in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

* * * * *

3. Section 80.93 is amended by revising paragraph (b)(6) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(b) * * *

(6) Confidential business information.

(i) Upon approval of an individual baseline, EPA will publish the individual annualized baseline exhaust emissions, on an annual average basis, specified in paragraph (b)(5)(ii) of this section. Such individual baseline exhaust emissions shall not be considered confidential. In addition, the reporting information required under § 80.75(b)(2)(ii) (D), (G) and (J), and § 80.105(a)(4)(i) (E), (H) and (K) shall not be considered confidential.

(ii) Information in the baseline submission which the submitter desires to be considered confidential business information (per 40 CFR part 2, subpart B) must be clearly identified. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the submitter pursuant to the provisions of 40 CFR part 2, subpart B.

* * * * *

4. Section 80.105 is amended by revising paragraph (a)(4) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(4)(i) If using the simple model:

(A) The applicable exhaust benzene emissions standard under § 80.101(b)(1)(i);

(B) The average exhaust benzene emissions under § 80.101(g);

(C) The applicable sulfur content standard under § 80.101(b)(1)(ii) in parts per million;

(D) The average sulfur content under § 80.101(g) in parts per million;

(E) The difference between the applicable sulfur content standard under § 80.101(b)(1)(ii) in parts per million and the average sulfur content under paragraph (a)(4)(i)(D) of this section in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(F) The applicable olefin content standard under § 80.101(b)(1)(iii) in volume percent;

(G) The average olefin content under § 80.101(g) in volume percent;

(H) The difference between the applicable olefin content standard under § 80.101(b)(1)(iii) in volume percent and the average olefin content under paragraph (a)(4)(i)(G) of this section in volume percent, indicating whether the average is greater or lesser than the applicable standard;

(I) The applicable T90 distillation point standard under § 80.101(b)(1)(iv) in degrees Fahrenheit;

(J) The average T90 distillation point under § 80.101(g) in degrees Fahrenheit; and

(K) The difference between the applicable T90 distillation point standard under § 80.101(b)(1)(iv) in degrees Fahrenheit and the average T90 distillation point under paragraph (a)(4)(i)(J) of this section in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

(ii) If using the optional complex model, the applicable exhaust benzene emissions standard and the average exhaust benzene emissions, under § 80.101(b)(2) and (g).

(iii) If using the complex model:

(A) The applicable exhaust toxics emissions standard and the average exhaust toxics emissions, under § 80.101(b)(3) and (g); and

(B) The applicable NO_X emissions standard and the average NO_X emissions, under § 80.101(b)(3) and (g).

* * * * *

[FR Doc. 95–30986 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 6F3417 and 7F3516/R2192; FRL–4990–7]

RIN 2070–AB78

Thiodicarb; Extension of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends until August 15, 1997, the temporary tolerances for the insecticide thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage, and cauliflower. Rhone Poulenc Ag. Co. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3417 and 7F3516/R2192], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 6F3417 and 7F3516/R2192]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Jr., Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703) 305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to petitions from the Rhone Poulenc Ag. Co., P.O. Box 12014, Research Triangle Park, NC 27709, EPA issued final rules establishing temporary tolerances for residues of the combined residues of the insecticide thiodicarb in or on leafy vegetables at 35 parts per million (ppm) and broccoli, cabbage, and cauliflower at 7 ppm (see the Federal Register of August 11, 1993 (58 FR 42673)). To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower, which were due to expire December 31, 1995, the Agency established the tolerances with an expiration date of August 15, 1996, to cover residues expected to be present from use during the period of conditional registration while the Agency continued to review studies of acetamide, a metabolite, and the chronic carcinogenicity studies for thiodicarb. The Agency concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower does not raise significant concerns and that extending the tolerances would still be protective of human health. The Agency is continuing to review submitted toxicology studies.

In a notice in the Federal Register of October 25, 1995 (60 FR 54690), the Agency announced the receipt of a request from Rhone Poulenc Ag. Co. to extend the temporary tolerances for thiodicarb and its metabolite for leafy vegetables, broccoli, cabbage, and cauliflower for 1 year with an expiration date of August 15, 1997. No comments were received as a result of the notice. Therefore, as set forth below, the temporary tolerances are extended for an additional year with an expiration date of August 15, 1997, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the Federal Register. Residues remaining in or on the above raw agricultural commodities after expiration of the tolerances will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 6F3417 and 7F3516/R2192] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 6F3417 and 7F3516/R2192], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: December 5, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.407 [Amended]

2. Section 180.407 *Thiodicarb; tolerances for residues* is amended in paragraph (b) introductory text by changing ''August 15, 1996'' to read ''August 15, 1997'', and in paragraph (c) introductory text by changing ''August 15, 1996'' to read ''August 15, 1997''.

[FR Doc. 95–30974 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 9F3787/R2194; FRL–4991–1]

RIN 2070–AB78

Avermectin B_1 and Its Delta-8,9-Isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity pears. Merck Research Laboratories requested this regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 9F3787/R2194], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 9F3787/R2194]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of November 1, 1989 (54 FR 46118), which announced that Merck Research Laboratories, Inc., Hillsborough Rd., Three Bridges, NJ 98887, had submitted a pesticide petition (PP 9F3787) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity (RAC) pears at 0.035 part per million (ppm). In a letter dated September 22, 1993, Merck requested that the pesticide petition be amended by proposing a lower tolerance on pears at 0.02 ppm. No comments were received in response to the notice of filing (See 58 FR 64583; Dec. 8, 1993).

The data submitted in support of this tolerance and other relevant material have been reviewed. The toxicological and metabolism data considered in support of this tolerance are discussed in detail in related documents published in the Federal Register of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus). The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight(bwt)/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance level residues. The ARC for established tolerances and the current action is estimated at 0.000013 mg/kg/bwt/day and utilizes 3.4 percent of the RfD for the U.S. population. For nonnursing infants less than 1-year old (the sub-group population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000030 mg/kg bwt/day and utilizes 7.5% of the RfD. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing ages. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 and above. The MOE is 1,000. Generally speaking, MOEs greater than 100 for

developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. Secondary residues occurring in livestock and their by-products are not expected since there are no known animal feed stock uses for pears. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on pears. There are currently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 9F3787/R2194] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper version of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystall Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

oop-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: December 7, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 continues to read as follows:

PART 180—[AMENDED]

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

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

2. By amending § 180.449(b) in the table therein by adding and alphabetically inserting an entry for pears, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Pears	0.02
* * * * *	

[FR Doc. 95–30975 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4105/R2191; FRL–4989–2]

RIN 2070–AB78

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl, in or on clover, forage at 1.0 part per million (ppm) and clover, hay at 2.5 ppm. Ciba-Geigy Corp. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This rule is effective on December 4, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4105/R2191], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 2F4105/R2191]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the Federal Register of June 15, 1995 (60 FR 31465), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition, PP 2F4105, to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl, in or on the raw agricultural commmodities cover, forage at 1.0 ppm and clover, hay at 2.5 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice).

Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This

conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of themicroscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD), anticipated residue contribution (ARC), and food additive regulations are covered by existing tolerances.

The nature of the residue is adequately understood. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2F4105/R2191] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

Under Executive Order 12866, EPA must judge whether a rule is ''major'' and therefore requires a Regulatory Impact Analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: December 4, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.408(a) by revising the introductory text and by amending the table therein by adding and alphabetically inserting new entries for clover, forage and clover, hay, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Clover, forage	1.0
Clover, hay	2.5
* * * * *	

* * * * *

[FR Doc. 95–30976 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50582L; FRL–4982–9]

RIN 2070–AB27

1,3-Propanediamine, N, N'-1,2-ethanediylbis-, Polymer with 2,4,6-Trichloro-1,3,5-triazine, Reaction Products with N-Butyl-2,2,6,6-tetramethyl-4-piperidinamine; Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine based on a modification to the TSCA 5(e) consent order regulating the substance. EPA is modifying this rule based on receipt of toxicity data.

EFFECTIVE DATE: The effective date of this rule is January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Assistance Office (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 15, 1990 (55 FR 33296), EPA issued a SNUR (FRL–3741–8) establishing significant new uses for 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine based on the section 5(e) consent order for the substance. Because of additional data EPA has received for this substance, EPA is modifying the SNUR.

I. Background

The Agency proposed the modification of the SNUR (FRL–4919–6) for this substance in the Federal Register of May 30, 1995 (60 FR 28075). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

II. Objectives and Rationale of Modification of the Rule

During review of the premanufacture notice (PMN) submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substances. EPA identified the tests considered necessary to evaluate the risks of the substances and identified the protective equipment necessary to protect any workers who may be exposed to the substances. The basis for such findings is in the rulemaking record referenced in Unit III of this preamble. Based on these findings, a section 5(e) consent order modification was negotiated with the PMN submitter.

In light of the petition to modify the consent order and SNUR, the 90-day subchronic test, the data on structurally similar polycationic polymers, and the recalculation of the risk assessment of the PMN substances based on information provided by the petitioner, the Agency determined that it could no longer support a finding that the PMN substance may present an unreasonable risk to human health or the environment for the hazard communication and respiratory protection requirements in this modification. The modification of SNUR provisions for the substances designated herein is consistent with the provisions of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS–50582. This record includes information considered by the Agency in developing this rule and includes the modification to consent orders to which the Agency has responded with this modification.

A public version of the record, without any Confidential Business Information, is available in the OPPT Non-Confidential Information Center (NCIC) from 12 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in the Northeast Mall Basement Rm. B–607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

EPA is modifying the requirements of this rule by eliminating several requirements. Any costs or burdens associated with this rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 11, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended to read as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.7280 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 721.7280 1,3-Propanediamine, N, N'-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine (PMN P–89–632) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Protection in the workplace. Requirements as specified in § 721.63 (a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) Hazard communication program. Requirements as specified in § 721.72 (a) through (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

* * * * *

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a) through (i).

* * * * *

[FR Doc. 95–30973 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7176

[CO–935–1430–01; COC–28255]

Partial Revocation of Secretarial Order Dated May 23, 1946; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 160 acres of public land withdrawn for the Bureau of Reclamation's Gunnison-Arkansas Project. The land is no longer needed for reclamation purposes, and the partial revocation will allow for disposal by exchange. This action will open 160 acres to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Alexa Watson, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3796.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated May 23, 1946, which withdrew public land for the Bureau of Reclamation's Gunnison-Arkansas Project, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 49 N., R. 5 W.,
Sec. 34, NE¼.

The area described contains 160 acres in Gunnison County.

2. At 9 a.m. on January 19, 1996, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 19, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 19, 1996, the land described in paragraph 1 will be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30840 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–JB–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7630]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the third column of the table. In the communities listed where a flood map

has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

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

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

Sate/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
North Carolina: Hertford County, unincorporated areas	370130	Oct. 6, 1995	June 2, 1978.
Texas: Oakwood, city of, Leon County	480437	Oct. 13, 1995	Feb. 6, 1976.
Georgia: Putman County, unincorporated areas	130540	Oct. 23, 1995	
Michigan: Gourley, township of, Menominee County	260455	...do	
South Carolina: Pamplico, town of, Florence County	450081	...do	Apr. 23, 1976.
Kansas: Miami County, unincorporated areas	200220	Nov. 6, 1995	June 7, 1977.
Texas:			
Roma, city of, Starr County	480577	Nov. 20, 1995	June 4, 1976.
Leon County, unincorporated areas	480903	Nov. 24, 1995	
New Eligibles—Regular Program			
South Carolina: Gilbert, town of, Lexington County	450132	Oct. 13, 1995	July 17, 1995.
California: Buellton, city of, Santa Barbara County[1]	060757	Oct. 16, 1995	
North Carolina: Cleveland County, unincorporated areas.	370302	Oct. 23, 1995	July 2, 1991.
Iowa:			
DeWitt, city of, Clinton County[2]	190568	Oct. 27, 1995.	
Reinstatements			
New York: Lima, village of, Livington County	361457	Jan. 11, 1980, Emerg; July 23, 1982, Reg; Nov. 4, 1992, Susp; Oct. 4, 1995, Rein.	July 23, 1982.
Pennsylania:			
Bellevue, borough of, Allegheny County	420009	Feb. 17, 1977, Emerg; Dec. 15, 1978, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Emsworth, borough of, Allegheny County	420034	June 20, 1975, Emerg; Sept. 30, 1980, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Briar Creek, borough of, Columbia County	420340	Aug. 31, 1973, Emerg; Aug. 15, 1979, Reg; Feb. 16, 1995, Susp; Oct. 13, 1995, Rein.	Feb. 16, 1995.
Upper St. Clair, township of Allegheny County	421119	June 11, 1974, Emerg; Mar. 15, 1984, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Illinois:			
New Lenox, village of, Will County	170706	Sept. 19, 1974, Emerg; May 1, 1980, Reg; Sept. 6, 1995, Susp; Oct. 16, 1995, Rein.	Sept. 6, 1995.
Kincaid, village of, Christian County	170858	Apr. 7, 1976, Emerg; April 1, 1993, Reg; Apr. 1, 1993, Susp; Oct. 19, 1995, Rein.	Apr. 1, 1993.
Pennsylvania: McCandless, township of, Allegheny County.	421081	Oct. 4, 1974, Emerg; June 18, 1980, Reg; Oct 4, 1995, Susp; Oct. 19, 1995, Rein.	Oct. 4, 1995.
New York: Sandy Creek, town of, Oswego County	360661	Aug. 18, 1975, Emerg; Oct. 15, 1981, Reg; July 17, 1995, Susp; Oct 20, 1995, Rein.	July 17, 1995.
Pennsylvania:			
Forward, township of, Allegheny County	421064	Sept. 27, 1994, Emerg; Feb. 1, 1980, Reg; Oct. 4, 1995, Susp; Oct. 23, 1995, Rein.	Oct. 4, 1995.
Cumberland, township of, Greene County	421188	Jan. 27, 1976, Emerg; July 1, 1986, Reg; Sept. 20, 1995, Susp; Oct. 23, 1995, Rein.	Sept. 20, 1995.

Sate/location	Community No.	Effective date of eligibility	Current effective map date
Stowe, township of, Allegheny County	421110	Dec. 5, 1974, Emerg; Feb. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 23, 1995, Rein.	Oct. 4, 1995.
New York:			
Waverly, town of, Franklin County	361126	Jan. 22, 1977, Emerg; Dec. 4, 1985, Reg; Nov. 4, 1992, Susp; Oct. 26, 1995, Rein.	Dec. 4, 1985.
Ballston Spa, village of, Saratoga, County	360710	July 7, 1975, Emerg; June 1, 1984, Reg; Aug. 16, 1995, Susp; Oct. 26, 1995, Rein.	Aug. 16, 1995.
Pennsylvania:			
Carnegie, borough of, Allegheny County	420019	July 3, 1973, Emerg; May 1, 1978, Reg; Oct. 4, 1995, Susp; Oct. 26, 1995, Rein.	Oct. 4, 1995.
South Versailles, township of, Allegheny County	421281	Aug. 7, 1974, Emerg; Aug. 1, 1979, Reg; Oct. 4, 1995, Susp; Oct. 26, 1995, Rein.	Oct. 4, 1995.
Kennedy, township of, Allegheny County	421072	Apr. 26, 1974, Emerg; Feb. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 27, 1995, Rein.	Oct. 4, 1995.
Baldwin, borough of, Allegheny County	420007	Nov. 19, 1973, Emerg; Aug. 15, 1978, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Brackenridge, borough of, Allegheny County	420014	Nov. 26, 1974, Emerg; Aug. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Crafton, borough of, Allegheny County	420026	Apr. 15, 1974, Emerg; Dec. 19, 1980, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Wisconsin: Stanlay, city of, Chippewa County	550047	Apr. 1, 1975, Emerg; Sept. 18, 1985, Reg; Sept. 18, 1985, Susp; Oct. 31, Rein.	Sept. 18, 1985.
Indiana: Laurel, town of, Franklin County	180306	May 27, 1975, Emerg; Sept. 1, 1988, Reg; Sept. 1, 1988, Susp; Nov. 6, 1995, Rein.	Nov. 2, 1995.
Illinois: Peotone, village of, Will County	170709	Aug. 14, 1974, Emerg; Jan. 14, 1983, Reg; Sept. 6, 1995, Susp; Nov. 6, 1995, Rein.	Sept. 6, 1995.
Pennsylvania:			
Harrison, township of, Potter County	421978	Dec. 31, 1975, Emerg; June 1, 1987, Reg; Aug. 2, 1993, Susp; Nov. 7, 1995, Rein.	June 1, 1995.
Neville, township of, Allegheny County	425385	Mar. 19, 1971, Emerg; July 7, 1978, Reg; Oct. 4, 1995, Susp; Nov. 7, 1995, Rein.	Oct. 4, 1995.
Rankin, borough of, Allegheny County	420067	Feb. 10, 1975, Emerg; July 2, 1980, Reg; Oct. 4, 1995, Susp; Nov. 20, 1995, Rein.	Oct. 4, 1995.
Indiana: Perry County, unincorporated	180195	Apr. 11, 1975, Emerg; Nov. 1, 1995, Reg; Nov. 1, 1995, Susp; Nov. 24, 1995, Rein.	Nov. 1, 1995.
Mississippi: Philadelphia, city of, Neshoba County	280120	Nov. 2, 1974, Emerg; Sept. 29, 1986, Reg; Oct. 18, 1995, Susp; Nov. 24, 1995, Rein.	Oct. 18, 1995.
Virginia: Salem, city of, independent city	510141	Mar. 8, 1974, Emerg; Sept. 2, 1981, Reg; Oct. 18, 1995, Susp; Nov. 22, 1995, Rein.	Oct. 18, 1995.
Pennsylvania:			
Oakmont, borough of, Allegheny County	420060	July 25, 1974, Emerg; Jan. 16, 1981, Reg; Oct. 4, 1995, Susp; Nov. 27, 1995, Rein.	Oct. 4, 1995.
Green Tree, borough of, Allegheny County	420040	June 27, 1974, Emerg; July 16, 1981, Reg; Oct. 4, 1995, Susp; Nov. 30, 1995, Rein.	Oct. 4, 1995.
South Carolina: Edgefield County, unincorporated areas.	450229	July 12, 1991, Emerg; Apr. 1, 1993, Reg; Sept. 20, 1995, Susp; Nov. 30, 1995, Rein.	Sept. 20, 1995.
Regular Program Conversions			
Region III			
Pennsylvania:			
Aleppo, township of, Allegheny County	421266	October 4, 1995 Suspension Withdrawn	10–4–95.
Aspinwall, borough of, Allegheny County	420005	.....do	Do.
Bell Acres, borough of, Allegheny County	420008	.....do	Do.
Bethel Park, Municipality of, Allegheny County	420012	.....do	Do.
Blawnox, borough of, Allegheny County	420013	.....do	Do.
Braddock, borough of, Allegheny County	420015	.....do	Do.
Bridgeville, borough of, Allegheny County	420018	.....do	Do.
Clairton, City of, Allegheny County	420034	.....do	Do.
Collier, township of, Allegheny County	421058	.....do	Do.
Corapolis, borough of, Allegheny County	420025	.....do	Do.
Dravosburg, borough of, Allegheny County	420027	.....do	Do.
Elizabeth, borough of, Allegheny County	421263	.....do	Do.
Elizabeth, township of, Allegheny County	420033	.....do	Do.
Etna, borough of, Allegheny County	421062	.....do	Do.
Fawn, township of, Allegheny County	421285	.....do	Do.
Findlay, township of, Allegheny County	421286	.....do	Do.
Glassport, borough of, Allegheny County	420038	.....do	Do.
Hampton, township of, Allegheny County	420978	.....do	Do.
Harmar, township of, Allegheny County	421068	.....do	Do.
Harrison, borough of, Allegheny County	420041	.....do	Do.
Haysville, borough of, Allegheny County	420042	.....do	Do.
Heidelberg, borough of, Allegheny County	420043	.....do	Do.

Sate/location	Community No.	Effective date of eligibility	Current effective map date
Homestead, borough of, Allegheny County	420044	.....do	Do.
Indiana, township of, Allegheny County	421070	.....do	Do.
Leet, township of, Allegheny County	421075	.....do	Do.
Leetsdale, borough of, Allegheny County	420047	.....do	Do.
Liberty, borough of, Allegheny County	420048	.....do	Do.
McDonald, borough of, Allegheny County	420855	.....do	Do.
McKeesport, city of, Allegheny County	420051	.....do	Do.
McKees Rocks, borough of, Allegheny County	420052	.....do	Do.
Mnuhall, borough of, Allegheny County	420056	.....do	Do.
North Fayette, township of, Allegheny County	421085	.....do	Do.
North Versailles, township of, Allegheny County	421231	.....do	Do.
O'Hara, township of, Allegheny County	421088	.....do	Do.
Penn Hills, Municipality of, Allegheny County	421092	.....do	Do.
Pine, township of, Allegheny County	421094	.....do	Do.
Pitcairn, borough of, Allegheny County	420062	.....do	Do.
Plum, borough of, Allegheny County	420065	.....do	Do.
Reserve, township of, Allegheny County	420068	.....do	Do.
Richland, township of, Allegheny County	421199	.....do	Do.
Robinson, township of, Allegheny County	421079	.....do	Do.
Sharpsburg, borough of, Allegheny County	420073	.....do	Do.
Springdale, township of, Allegheny County	420074	.....do	Do.
Swissvale, borough of, Allegheny County	420075	.....do	Do.
Tarentum, borough of, Allegheny County	420076	..... do	Do.
Turtle Creek, borough of, Allegheny County	420079	..... do	Do.
Verona, borough of, Allegheny County	422611	..... do	Do.
Versailles, borough of, Allegheny County	420081	..... do	Do.
Wall, borough of, Allegheny County	420082	..... do	Do.
West Deer, township of, Allegheny Couunty	421299	..... do	Do.
West Elizabeth, borough of, Allegheny County	420083	..... do	Do.
Wilmerding, borough of, Allegheny County	420091	..... do	Do.
Virginia: Hampton, independent city	515527	..... do	7–3–95.
Region V			
Illinois: Old Mill Creek, village of, Lake County	170385	..... do	8–1–80.
Regular Program Conversions			
Region I			
Maine: Auburn, city of, Androscoggin County	230001	October 18, 1995 Suspension Withdrawn	10–18–95.
Region III			
Maryland: Oakland, town of, Garrett County	240039	..... do	Do.
Pennsylvania:			
East Bethlehem, township of, Washington County	422140	..... do	Do.
Elco, borough of, Washington County	420852	..... do	Do.
Henderson, township of, Huntingdon County	420960	..... do	Do.
Monongahela, township of, Greene County	421673	..... do	Do.
Virginia: Roanoke County, unincorporated areas	510190	..... do	Do.
West Virginia:			
Fairmont, city of, Marion County	540099	..... do	Do.
Marion County, unincorporated areas	540097	..... do	Do.
Morgantown, city of, Marion County	540141	..... do	Do.
Star City, town of, Monongalia County	540273	..... do	Do.
Region V			
Ohio: Hamiltion County, unincorporated areas	390204	..... do	Do.
Indiana:			
Flora, town of, Carroll County	180021	November 1, 1995 Suspension Withdrawn	11–1–95.
Scott County, unincorporated areas	180474	.....do	Do.
Vermillion County, unincorporated areas	180449	.....do	Do.
Ohio: Trimble, village of, Athens County	390021	.....do	Do.
Region I			
Connecticut: Bozrah, town of, New London County	090094	November 2, 1995 Suspension Withdrawn	11–2–95.
Region II			
New Jersey: South Belmar, borough of, Monmouth County.	340328	.....do	Do.
Region III			
Pennsylvania: Jefferson, township of, Greene County	421672	.....do	Do.
Region V			
Illinois: Hampshire, village of, Kane County	170327	.....do	Do.
Indiana:			

Sate/location	Commu-nity No.	Effective date of eligibility	Current effective map date
Brookville, town of, Franklin County	180069	.....do	Do.
Cedar Grove, town of, Franklin County	180304	.....do	Do.
Franklin County, unincorporated areas	180068	.....do	Do.
Michigan: Montrose, township of, Genessee County	260399	.....do	Do.
Ohio: Napoleon, city of, Henry County	390266	.....do	Do.
Wisconsin: Washburn, city of, Bayfield County	550019	.....do	Do.
Region VIII			
Utah: Davis County, unincorporated areas	490038	.....do	Do.
Regular Program Conversions			
Region II			
New York:			
Schroon, town of, Essex County	361158	November 16, 1995 Suspension Withdrawn	11–16–95.
Wilmington, town of, Essex County	361161	.....do	Do.
Region III			
Pennsylvania:			
Allenport, borough of, Washington County	420845	.....do	Do.
Belle Vernon, borough of, Fayette County	420457	.....do	Do.
Brownsville, borough of, Fayette County	420458	.....do	Do.
Brownsville, township of, Fayette County	421621	.....do	Do.
Marion Center, borough of, Indiana County	420503	.....do	Do.
Stroud, township of, Monroe County	420693	.....do	Do.
Region V			
Illinois: Mill Creek, village of, Union County	170659	.....do	Do.
Indiana: Carmel, city of, Hamilton County	180081	.....do	Do.
Ohio:			
Laurelville, village of, Hocking County	390273	.....do	Do.
Meigs county, unincorporated areas	390387	.....do	Do.
Wisconsin: Clintonville, city of, Waupaca County	550494	.....do	Do.
Region VI			
Louisiana:			
Grant County, unincorporated areas	220076	.....do	Do.
New Roads, town of, Pointe Coupee Parish	220144	.....do	Do.
Pointe Coupee Parish, unincorporated areas	220140	.....do	Do.
Oklahoma: Comanche, city of, Comanche County	400008	.....do	Do.
Withdrawn			
Oklahoma: Delaware Tribe of Western Oklahoma, Caddo County.	40052	Oct. 18, 1985, Emerg; Jan. 18, 1988, Reg; Dec. 16, 1992, Susp; Feb. 18, 1993, Rein; Nov. 20, 1995, With.	9–27–91.

[1] The City of Buellton has adopted by reference Santa Barbara County's Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for floodplain management and insurance purposes dated 6–3–92. (Santa Barbara County's CID number is 060331; panels number 554, 555, 556 and 558).

[2] The City of DeWitt has adopted by reference Clinton County's FIRM dated 9–1–90, for floodplain management and insurance purposes. (Panels 21 and 13). Clinton County's CID number is 190859.

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

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

Issued: December 15, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–30965 Filed 12–19–95; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–113; RM–8664, RM 8697]

Radio Broadcasting Services; Salem and New Martinsville, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Salem-Teikyo University, allots Channel 277A at Salem, West Virginia, as the community's second local FM transmission service (RM–8664). *See* 60 FR 39141, August 1, 1995. We also, at the request of Seven Ranges Radio Company, Inc., allot the counterproposal for Channel 258A at New Martinsville, West Virginia, as its second local FM transmission service (RM–8697). Channel 277A can be allotted to Salem in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 277A at Salem are North Latitude 39–17–00 and West Longitude 80–34–00. Additionally, Channel 258A can be allotted to New

Martinsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 258A at New Martinsville are North Latitude 39–38–36 and West Longitude 80–51–36. *See* Supplementary Information, *infra*.

DATES: Effective January 29, 1996. The window period for filing applications will open on January 29, 1996 and close on February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–113, adopted November 27, 1995, and released December 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Since Salem and New Martinsville are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 277A at Salem, and by adding Channel 258A at New Martinsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30897 Filed 12–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 100

[IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–507]

Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 14, 1995, the Federal Communications Commission adopted a Report and Order in which it adopted a number of new rules and policies for the Direct Broadcast Satellite (''DBS'') service, including the use of competitive bidding to resolve mutually exclusive applications for DBS resources. As part of its decision in *Advanced Communications Corporation*, FCC 95–428 (released October 18, 1995), the Commission reclaimed for the public 51 channels of DBS spectrum at two orbital locations (27 channels at 110° W.L. and 24 channels at 148° W.L.) that had previously been assigned to Advanced Communications Corporation (''ACC''). The Commission adopts rules and policies in the DBS service in order to update the current ''interim'' rules and to reassign, through a competitive bidding process, channels at orbital locations previously assigned to ACC.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings or Bill Wiltshire, International Bureau, (202) 418–0420; or Diane Conley, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Report and Order in IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–507, adopted on December 14, 1995, and released on December 15, 1995. The complete text of this Report and Order (''Order'') is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037. This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Pub. L. 104–13, which were proposed in the NPRM and submitted to the Office of Management and Budget (''OMB'') for approval. The Commission received no comments on the proposed information collections, and therefore adopts them as originally proposed. The effective date of the new and modified rules being adopted falls after the deadline for OMB action under the PRA.

Synopsis of the Report and Order

I. Introduction

1. Over six years ago, in *Continental Satellite Corporation,* 4 FCC Rcd 6292 (1989), the Commission stated that existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. The Notice of Proposed Rulemaking (''NPRM'') in this proceeding, 60 FR 55822 (Nov. 3, 1995), tentatively concluded that this reassignment policy no longer serves the public interest, and accordingly proposed to use competitive bidding when the Commission has received mutually exclusive applications for reassignment of such DBS resources. Specifically, the NPRM proposed to auction two large blocks of channels that are currently available at two orbital locations. In addition, the NPRM proposed new service rules that would: (1) impose performance criteria intended to ensure that DBS resources are utilized in a timely manner; (2) guard against potential anticompetitive conduct by DBS providers; and (3) ensure timely DBS service to Alaska and Hawaii. The NPRM also requested comment on our existing policy governing the extent to which DBS resources may be put to alternative uses.

2. The Commission concludes that the public interest is no longer served by the *pro rata* methodology established in *Continental* for reassigning reclaimed DBS channels. Accordingly, the Commission adopts new rules for reassigning DBS resources. In the Order, the Commission finds that it has the statutory authority to auction DBS construction permits if the Commission receives mutually exclusive applications, and that the objectives of Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be served by doing so. Specifically, under the Order the Commission will auction two DBS construction permits: one for all 28 channels now available at the 110° W.L. orbital location (27 channels from ACC plus 1 channel that was never assigned), and another for all 24 channels now available at the 148° W.L. orbital location. The NPRM proposed to employ an oral outcry auction to award construction permits for these channel blocks. The Commission has instead determined that these two permits should be awarded through a sequential multiple round electronic auction. Other auction designs may be used for future DBS auctions.

3. The Commission also adopts three new service rules and revises an existing policy. First, a person receiving a new or additional DBS construction permit will be required to complete construction of its first satellite within four years of receiving its permit, and to complete all satellites in its DBS system within six years. Second, new permittees will be required to provide DBS service to Alaska and Hawaii from any orbital location where such service is technically feasible, and existing permittees will be required to provide such service from either or both of their assigned orbital locations in order to retain their channel assignments at western orbital locations. Third, the term for non-broadcast DBS licenses will be lengthened from five years to ten years, to encourage investment and innovation in the service and to better match the useful life of DBS satellites. In addition, the existing policy restricting non-DBS use of DBS resources will be restated in terms of capacity rather than time in order to allow DBS licensees to configure their systems more efficiently. The Commission believes that these rules are well designed to spur swift development of DBS spectrum resources to the benefit of the American public.

II. Proposed Service Rules

A. Performance Objectives

4. The Commission finds that combining existing due diligence requirements with additional milestones for construction and operation of DBS systems by new permittees will prevent unnecessary delays in the commencement of service. Accordingly, the Commission adopts, as proposed in the NPRM, two additional performance criteria for those receiving DBS construction permits after the effective date of the proposed rule: (1) completion of construction of the first satellite in a DBS system within four years of authorization; and (2) launch and operation of all satellites in a DBS system within six years of authorization.

B. Use of DBS Capacity

5. At present, Commission policy requires each DBS licensee to begin DBS operations before the end of its first five-year license term, but allows otherwise unrestricted use during that term. After expiration of the first term, a DBS operator may continue to provide non-DBS service only on those transponders on which it also provides DBS service, and only up to half of the use of each transponder each day. The Commission finds that capacity-based restrictions would allow DBS permittees and licensees more flexibility in how they configure their satellites as a matter of technical efficiency in complying with the limitations we have imposed. Accordingly, the Order restates existing restrictions on the use of DBS resources as a function of capacity rather than time, but otherwise retains the existing use policy. Thus, the new policy will be that a DBS licensee must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum during that time. After that five-year period, such a licensee may continue to provide non-DBS service so long as at least half of its total capacity at a given orbital location is used for DBS service.

6. The NPRM noted the possibility that, as a result of a separate proceeding, operators using DBS channels and orbital locations may be permitted to provide both domestic and international service. *See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems,* Notice of Proposed Rulemaking, FCC 95–146, para. 38 (released April 25, 1995)(''*Transborder/Separate Systems*''), 60 FR 24817 (May 10, 1995). The Commission notes that the construction permits available at auction currently authorize only DBS service to the United States, and finds that the potential for international DBS service is no basis for delaying the auction pending resolution of international satellite service issues in the *Transborder/Separate Systems* proceeding.

C. Rules and Policies Designed to Promote Competition

1. Spectrum Aggregation Limitations. 7. The NPRM proposed certain rules intended to prevent strategic use of DBS resources for anticompetitive purposes and also requested comment on whether additional steps were necessary to achieve the desired goal of fostering competition among multichannel video programming distributors (''MVPDs''), such as DBS and cable systems. Two of the rules proposed were structural, in that they placed limits on the number of full-CONUS DBS channels a person could hold or use. The NPRM also proposed rules aimed at preventing specific types of potentially anticompetitive conduct, and requested comment on the degree to which existing rules might address those same concerns.

8. The Commission rejects both of the spectrum caps proposed in the NPRM, and instead adopts a one-time spectrum limitation applicable to the upcoming auction. Under this one-time auction rule, a party currently holding an attributable interest in full-CONUS channels at one location may bid at auction for channels currently available at the 110° location, but if successful must divest its existing full-CONUS channels at any other location within twelve months. The Commission finds that the rule is necessary given the scarcity of full-CONUS DBS spectrum and the impact that concentration of this spectrum into the hands of any single provider might have on the overall MVPD market. The resulting intra-DBS competition will best serve the public interest by ensuring a level of rivalry between and among DBS firms and other MVPDs that should constrain any potential there might be for strategic anticompetitive conduct. The Commission also finds that twelve months should be sufficient to allow an orderly divestiture, if necessary, and strikes a proper balance between the time necessary for negotiation and the desire to ensure that spectrum not remain idle.

9. For purposes of implementing the spectrum aggregation limitation adopted in the Order, the Commission will only consider three orbital locations—101°, 110°, and 119°—to be capable of full-CONUS service. A fourth orbital location, at 61.5o W.L, should not be deemed to be capable of delivering full-CONUS service at this time since an operator serving customers in the western United States from that location would face interference from tall objects that an operator from the other three locations would not face due to their better look angles, and therefore would be at a qualitative disadvantage in attracting customers.

10. In applying the auction spectrum rule adopted in the Order, interests will be attributed to their holders and deemed cognizable under criteria similar to those used in the context of the broadcast, newspaper and cable television cross ownership rules. The rules adopted in the Order attribute the following interests: (1) any voting interest of five percent or more; (2) any general partnership interest and direct ownership interest; (3) any limited partnership interest, unless the limited partnership agreement provides for insulation of the limited partner's interest and the limited partner in fact is insulated from and has no material involvement, either directly or indirectly, in the management or operation of the DBS activities of the partnership; and (4) officers and directors. As with the broadcast rules, the attribution threshold for institutional investors is ten percent, and a multiplier will be used to

calculate interests held through successive and multiple layers of ownership.

2. Conduct Rules. 11. In addition to the structural solutions designed to promote competition by preventing the potential for undue concentration of DBS and MVPD resources, the NPRM also proposed conduct limitations on the use of DBS resources in order to address a number of specific forms of potential anticompetitive behavior. In the Order, the Commission finds that the one-time auction rule described above will significantly promote rivalry among DBS systems and encourage the development of competition in markets for the delivery of video programming. The Order states that there is little direct evidence of anticompetitive behavior specific to the DBS context. Accordingly, the Commission has decided to rely upon the competitive effect of its one-time spectrum rule to prevent the range of anticompetitive conduct discussed in the NPRM, and thus refrains from adopting conduct rules at this stage in the development of the DBS industry.

12. In view of the market structure set in motion by the Order's one-time spectrum rule, the Commission does not find it necessary to adopt rules prohibiting DBS services from being offered as ''ancillary'' to cable services. Thus, there is no reason to extend to all non-DBS MVPDs the restrictions imposed in the DBS construction permit issued to Tempo Satellite, Inc., or to maintain those restrictions with respect to Tempo. Similarly, the Commission finds no compelling need at this time for adopting rules designed to ensure that a cable-affiliated DBS operator will compete against other DBS providers for subscribers in cabled areas, or for determining that all joint marketing arrangements between DBS operators and other MVPDs will a fortiori reduce competition. Further, the Commission declines to amend the existing program access and carriage rules to address specific conduct by DBS operators. The Order states that there is no evidence in this record that exclusive agreements currently pose any anticompetitive concern or will do so in the future.

13. The NPRM identified as another area of concern program access issues related to the development of systems such as TCI's proposed ''Headend in the Sky'' (''HITS'') service for satellite delivery of programming to terrestrial MVPD systems. It appears that a HITS-like service that provides most of the available programming, and provides it in a digital format that could be passed through to subscribers, could offer substantial efficiencies for many MVPDs. The benefits of this service cannot materialize if competing DBS operators are unable to provide such service because, for example, programmers refuse to authorize MVPDs to receive programming services from the competing operator's DBS satellite. However, the Commission has no evidence before it of firms presently supplying HITS-like service, and the actual characteristics of such a service remain unclear. Moreover, resolution of the issues surrounding such a service is not necessary to the proceeding at hand. Accordingly, the Commission has decided that it would be imprudent to consider rules governing HITS service absent a better understanding of the nature of the service.

Other Concerns

14. The NPRM observed that in the Advanced Communications Corporation proceeding, commenters raised a number of other concerns about potential strategic conduct that could arise from cable-affiliated ownership of full-CONUS DBS spectrum. Those commenters argued that cable-affiliated ownership of full-CONUS DBS spectrum should be prohibited, or in the alternative, that several remedial conditions should be imposed. The NPRM sought comment on the extent to which those and related concerns are implicated by the proposed auction of DBS construction permits, and if so, whether additional DBS service rules might be appropriate to address those concerns. For the time being, the Commission has decided to rely upon the one-time auction spectrum limitation, the rivalry that rule should promote throughout the MVPD market, and the Commission's ongoing ability to monitor developments in the DBS and MVPD markets through its Title III authority, as adequate restraints on anticompetitive conduct. The Commission remains committed to fostering a vibrant DBS service and recognizes that periodic reviews will be necessary to ensure that the benefits of rivalry are available to the public. It intends to keep a watchful eye on developments in the service to ensure that DBS systems have an opportunity to develop into truly competitive MVPDs.

East/West Paired Assignments

15. The NPRM tentatively concluded that progress in the DBS service has rendered unnecessary the *Continental* policy of assigning DBS channels only in east/west pairs. The commenters supported this conclusion, and accordingly the Commission will no longer require DBS permittees and licensees to retain their assigned channels in east/west pairs.

D. Service to Alaska and Hawaii

16. The Commission adopts the rules proposed in the NPRM to: (1) require that all new permittees must provide service to Alaska and Hawaii if such service is technically feasible from their orbital locations; and (2) condition the retention of channels assigned to current permittees at western orbital locations on provision of such service, from either or both of their assigned orbital locations. These rules should help achieve the important goal of bringing service to underserved regions of the United States. The Commission declined the proposal of some commenters that the first rule be applied to existing as well as new permittees. The Commission notes that service to Alaska and Hawaii has already been shown to be feasible from all but the 101°W.L. and 61.5°W.L. orbital locations, and that any party acquiring channels at those two locations that desires not to provide service to Alaska or Hawaii will bear the burden of showing that such service is not feasible as a technical matter, or that while technically feasible such service would require so many compromises in satellite design and operation as to make it economically unreasonable.

E. License Term

17. The Commission adopts the NPRM's proposal to increase the term of a non-broadcast DBS license from 5 years to 10 years, the maximum allowed under the Communications Act, which better reflects the useful life of a DBS satellite, is consistent with the current proposal for extending the term of satellite licenses in other services, and should encourage investment and innovation in the DBS service.

III. Adoption of a New Methodology for Reassigning DBS Resources

18. Over six years ago, in the *Continental* decision, the Commission stated that existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. The NPRM tentatively concluded that this reassignment policy, adopted in an era before Congress explicitly authorized the Commission's use of auctions and well before any DBS system actually went into operation, no longer serves the public interest, and therefore should be abandoned.

19. After reviewing the comments received in response to the NPRM, the Commission remains convinced that the *pro rata* distribution of reclaimed

channels to existing permittees no longer serves the public interest. The historic policy of assigning a relatively small number of channels to each permittee was based upon a conception of DBS service that has not been put into practice. Instead, the service has experienced a move toward channel consolidation, an understandable trend given that DBS systems must compete in the MVPD market with cable systems that are promising a 500-channel service in the future. Under *Continental*, the channels available for reassignment would be divided *pro rata* to assign five pairs of channels at two orbital locations to each of six permittees. The result would be a piecemeal assignment of valuable spectrum, requiring the permittees to negotiate either joint operations or channel swaps. The process necessary in either case is often a time consuming one that is not always successful, which is further complicated by the time required for Commission consideration and approval of the resulting transactions. There is also no guarantee that the permittees eligible for this distribution value the channels most highly and can put them to use most efficiently.

20. By contrast, competitive bidding procedures are specifically designed and intended to assign scarce resources to those who value them most highly and can make the most efficient use of them. By offering the available channels in two large blocks, the Commission obviates the need for reaggregation and allows the auction winners to proceed directly to acquisition or construction of satellites and system operation of their systems. Since the Commission intends to hold an auction in January 1996, it concludes that an auction method is better suited to achieving expedited service from the channels available than is the existing policy under *Continental*. In addition, the Commission concludes that since it has determined that the public interest supports a change in its regulatory approach, it has full authority to modify existing DBS permits through notice and comment rulemaking, even if doing so frustrates the expectations of existing permittees.

21. All potential auction participants should be aware that the decision cancelling ACC's construction permit is currently on appeal, and that others may seek judicial review of this Order as well. In the unlikely event that a court either overturns the Advanced order and ACC's permit with its associated orbital/channel authorizations is ultimately reinstated, or overturns this rulemaking and the *Continental* reassignment methodology is ultimately maintained, the Commission would rescind any permit awarded through the auction process and move with all deliberate speed to refund money paid up to that point. Participants in the auction are hereby put on notice of this possibility, and should be willing to facilitate that process if it becomes necessary.

IV. Adoption of Rules for Auctioning DBS Permits

A. Authority to Conduct Auctions

The Commission has authority under Section 309(j) of the Communications Act, 47 U.S.C. 309(j), to employ auctions to choose among mutually exclusive applications for initial licenses or construction permits where the principal use of the spectrum is likely to involve the licensee receiving compensation from subscribers. Having reviewed the comments received in response to the NPRM in this proceeding, the Commission concludes that it has the authority under Section 309(j) to award DBS construction permits for the spectrum reclaimed from ACC, as well as other available spectrum, by means of competitive bidding.

Given that both DBS licensees now providing service to the public operate on a subscription basis, and all other permittees planning to initiate service in the near future also plan to offer subscription-based service, the Commission believes that it is a reasonable assumption that a majority of the use of DBS spectrum is likely to involve the licensee receiving compensation from subscribers, and the ''principal use'' requirement of the statute is therefore satisfied. In light of current licensees' subscription-based operations, and all other permittees' plans for such operations, the Commission disagrees with the claim made by one commenter that competitive bidding will force DBS operators to offer all-subscription service.

The Commission also disagrees with the argument made by another commenter that construction permits awarded for the channels reclaimed from ACC are not initial. When channels are reclaimed from existing permittees, the construction permits for them are cancelled and cannot be modified. Thus, any construction permits awarded for reclaimed channels will be ''initial'' under Section 309(j) because they will be new permits for the channels in question.

With respect to the requirement of mutual exclusivity, the Commission does not accept the claim that it could have avoided mutual exclusivity by applying the spectrum reassignment policy in *Continental*. The Commission has determined that this policy would delay the development of DBS service and would squander valuable spectrum, and thus would not be in the public interest. The Commission also notes that where it has scheduled an auction and it turns out that only one application is filed for a particular construction permit, the auction will be cancelled and the application will be processed. In addition, the Commission will consider mutual exclusivity to exist only when the number of DBS channels sought at a given orbital location exceeds the number available there.

The Commission further concludes that the use of competitive bidding to assign DBS spectrum will promote the statutory objectives of the rapid deployment of service and the efficient use of spectrum more effectively than any other spectrum assignment method. An auction is likely to promote the rapid deployment of service because those parties that are in the best position to deploy technologies and services are also likely to be the highest bidders. In addition, abandonment of the Commission's *Continental* policy opens the DBS industry to a wide range of potential new entrants and thus is consistent with the statutory objective of disseminating licenses among a wide variety of licensees. The possibility that auction costs will be passed on to consumers does not mean, as certain commenters assert, that auctions will not serve the statutory objective of recovering a portion of the value of DBS spectrum for the public. DBS operators may also pass on other costs to consumers. Moreover, auction winners will be constrained from charging rates higher than those of competitors who have not paid for spectrum. Finally, the auctioning of DBS channels will ensure that the ultimate holder of the channels has paid market value to the U.S. Treasury and thus will serve the statutory goal of avoiding unjust enrichment. The Commission will therefore award construction permits for the channels available at 110° and 148°, as well as DBS construction permits that become available in the future, by means of competitive bidding.

B. Competitive Bidding Design

The Commission will auction one construction permit for the block of 28 channels at 110° and one construction permit for the block of 24 channels at 148°. The Commission believes that designating two permits for these channels will best serve the public interest and the objectives of Section 309(j)(4)(B), 47 U.S.C. 309(j)(4)(B),

especially the promotion of investment in and rapid deployment of the DBS service. The construction permits available for auction include authority to transmit pursuant to allocations in accordance with the ITU feeder link plan allocating frequencies for establishing uplinks and downlinks. The Commission recognizes that there may be legitimate reasons for auctioning spectrum in smaller blocks; therefore, in the future, the Commission may auction DBS spectrum either channel by channel or in small blocks.

The Commission proposed in the NPRM to award the construction permits for the channels available at 110° and 148° by means of an oral outcry auction. However, the Commission is persuaded by the comments submitted that the auction for these channels should have more structure. The Commission concludes that a sequential multiple round electronic auction would be the best way of providing such structure. The primary benefit of additional structure is the reduced risk of bidders making errors in submitting bids, and bid submission errors are far less likely with electronic bidding than in a traditional oral auction. Multiple round electronic bidding also provides bidders more time to analyze previous bids, confer with decision makers, and refine their bidding strategy than a continuous oral auction. Multiple round electronic bidding with the activity rule adopted by the Commission also provides bidders with more information about other bidders' valuations. Finally, given the Commission's experience with electronic auctions, such an auction is likely to be easier for the Commission to implement.

In anticipation of a rapid auction pace, the Commission will provide for electronic bidding at an FCC auction site. The Commission does not anticipate allowing telephone bids and remote electronic bidding, but the Wireless Telecommunications Bureau will announce by Public Notice whether such bidding will be permitted. In the event that telephone bids and remote electronic bidding are not allowed, all bidders will be required to have an authorized bidding representative at the auction site. The channels at 110° and 148° will be auctioned separately since no commenter has made the case that there is significant interdependence between the channels available at these two orbital locations. The Commission may auction one channel block immediately after the other, but also reserves the discretion to hold two separate auctions for the two blocks.

Although the Commission will not use simultaneous multiple round bidding, oral outcry bidding, sealed bidding, or a combined sealed bid-oral outcry auction to award construction permits for the spectrum available at 110° and 148°, such auction designs could be suitable for DBS under certain circumstances. The Commission therefore adopts rules providing for these auction designs, and reserves the discretion to employ such auction designs for DBS in the future. The Commission also delegates to the Wireless Telecommunications Bureau the authority to implement and modify auction procedures—including the general design and timing of an auction, the number of authorizations to be offered in any one auction, the manner of submitting bids, and procedures such as minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements—and to announce such procedures by Public Notice.

C. Bidding Procedures

Sequencing. The 28 channels available at 110° will be auctioned first. The sequence of future DBS auctions will be determined in keeping with the Commission's general finding that the highest value licenses should be auctioned first because the greater the value of the licenses, the greater the cost to the public of delaying licensing. *See Second Report and Order,* PP Docket No. 93–253, 59 FR 22980 (May 4, 1994). In the event that the Commission needs to assign separate blocks of channels that it believes to be interdependent, it may choose to utilize a simultaneous multiple round auction.

Bid Increments and Tie Bids. The Commission reserves the discretion to establish, raise and lower minimum bid increments in the course of DBS auctions. The Commission anticipates using larger percentage minimum bid increments early in the auction and reducing the minimum increment percentage as bidding activity falls. The Commission also reserves the discretion to establish and change maximum bid increments in the course of DBS auctions. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

Minimum Opening Bid. The Commission believes that it would be useful to have a minimum opening bid for the channels at 110° to help move the auction along and to increase the likelihood that the public receives fair market value for the spectrum. A minimum opening bid therefore will be established for the channels available at 110°, the amount of which will be announced by Public Notice. The amount of this minimum opening bid will be determined using all available information and taking into consideration the uncertainty as to the value of the spectrum. No commenter has suggested a minimum opening bid for the channels available at 148°, and it appears that the value of these channels is substantially lower than the value of the channels at 110°. The Commission therefore will not set a minimum opening bid for the channels at 148°. The Commission also reserves discretion to decide whether to set minimum opening bids for individual auctions in the future as circumstances warrant.

Activity Rules. A bidder must be active in each round of the auction or use an activity rule waiver. To be active in the current round, a bidder must submit an acceptable bid in the current round or have the high bid from the previous round. Bidders will be provided with five activity rule waivers that may be used in any round during the course of the auction. A bidder who is not active in a round and has no remaining activity rule waivers will no longer be eligible to bid on the construction permit being auctioned.

If a bidder is not active in a round, a waiver will be applied automatically. An automatic waiver applied in a round in which there are no new valid bids will not keep the auction open. A proactive activity rule waiver is a waiver invoked by a bidder during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control or in the event of a bid withdrawal, as discussed below. The Commission also retains the flexibility to adjust by Public Notice prior to an auction the number of waivers permitted.

Stopping Rules. A stopping rule specifies when an auction is over. The auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission retains the discretion, however, to keep the auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver.

D. Procedural and Payment Issues

Application Procedures, Permittee Qualifications, and Payment for Construction Permits Awarded by Competitive Bidding. The Commission's general procedural and payment rules for auctions will be applied to the DBS service, along with certain modifications. Applicants for DBS auctions will be required to file a short-form application, FCC Form 175, prior to the auction in which they wish to participate. Filing deadlines will be announced by Public Notice. If administratively feasible, electronic filing of FCC Form 175 for the auction of spectrum available at 110° and 148° will be allowed; filing procedures will be announced by Public Notice. For subsequent DBS auctions, the Commission will also announce by Public Notice how such forms should be filed.

As discussed below, every DBS auction participant will be required to submit to the Commission an upfront payment prior to commencement of the auction. In addition, every auction winner will be required to submit an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. Winning bidders will be required to file information in conformance with Part 100 of the Commission's Rules within 30 days of the announcement of winning bidders. Winning bidders must submit, as part of this post-auction application process, a signed statement describing their efforts to date and future plans to come into compliance with any applicable spectrum limitations, if they are not already in compliance.

After reviewing a winning bidder's information supplied in conformance with Part 100 and determining that the bidder is qualified to be a permittee, and after verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. If the Commission dismisses or denies any and all petitions to deny, the Commission will issue an announcement to this effect, and the winning bidder will then have five (5) business days to submit the balance of its winning bid. If the bidder does so, the permit will be granted subject to a condition, if necessary, that the permittee come into compliance with any applicable spectrum limitations within twelve (12) months of the final grant. The permittee may come into compliance with applicable spectrum caps by either surrendering to the Commission its excess channels or filing an application that would result in divestiture of the excess channels. If the bidder fails to submit the balance of the winning bid or the permit is otherwise denied, the Commission will assess a default payment as set forth below and re-auction the permit.

Upfront Payment. The Commission's approach to upfront payments varies from auction to auction depending on a balancing of the goal of encouraging bidders to submit serious bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. In the *Second Report and Order* in the Competitive Bidding proceeding, the Commission outlined a rationale for setting upfront payments at roughly five percent of the estimated value of a winning bid. *Second Report and Order,* PP Docket No. 93–253, 59 FR 22980 (May 4, 1994). A year ago, Tempo would have paid ACC $45 million for its channels at 110° and 148°. In view of the fact that MCI has stated it would bid $175 million for the channels at 110°, and in the absence of any specific expression of interest in bidding on the channels at 148°, it seems clear that the channels at 110° are more valuable than those at 148°. Moreover, the Commission strongly believes that the value of the channels has increased over the past year. These considerations lead the Commission to set an upfront payment of $10 million for the channels at 110° and $2 million for the channels at 148°. The figure of $10 million is well above five percent of $45 million (it is actually 22.2 percent). This reflects a balancing of the assumed increase in value of the spectrum with the fact that the channels at 110° and 148° were included in the Tempo-ACC arrangement.

The magnitude of the upfront payment also reflects the Commission's concern that, if the upfront payment is too low, there is a risk of encouraging insincere bidding. Moreover, a $10 million payment should not be an excessive burden for bidders because it will not be held for a significant amount of time. In addition, $10 million is the lowest of the specific upfront payment suggestions in the comments. With respect to procedures for collecting upfront payments, the Commission will accept only wire transfers for the auction of the channels available at 110° and 148°.

Bid Withdrawal, Default and Disqualification. Any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the construction permit is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. To prevent multiple withdrawals by the same party, the Commission will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit.

In the event of a bid withdrawal, the Commission will reoffer the construction permit in the next round. The offer price will be the highest price at or above which bids were made in previous rounds by three or more bidders. The Commission may at its discretion reduce this price in subsequent rounds if it receives no bids at this price. Prior to restarting the auction, the Commission will also restore the eligibility of all bidders who have not withdrawn. After a withdrawal the Commission will also issue each eligible bidder one activity rule waiver in addition to any remaining waivers to provide additional time for bid preparation and to avoid accidental disqualification.

A default payment will be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The amount of this default payment will be equal to the difference between the defaulting auction winner's ''winning'' bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner will be required to submit a payment of three (3) percent of the subsequent winning bid or three (3) percent of its own ''winning'' bid, whichever is less. If withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other action the Commission deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Regulatory Safeguards

Transfer Disclosure Provisions. In order to accumulate data to evaluate whether DBS authorizations are being issued for bids that fall short of market value, the Commission will require any entity that acquires a DBS license through competitive bidding and seeks

to transfer that license within six years of the initial license grant, to file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. Thus, the information submitted should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration. Any competitive concerns raised by the possible disclosure of sensitive information can be addressed by the provisions in Sections 0.457 and 0.459 of the Commission's rules, 47 CFR §§ 0.457, 0.459, providing for the nondisclosure of information.

Performance Requirements. In implementing auction procedures, the Commission is required under Section 309(j) to include performance requirements ''to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' 47 U.S.C. § 309(j)(4)(B). The Commission concludes that the performance requirements adopted as part of the DBS service rules are sufficient to achieve these goals, and it is unnecessary to adopt any further performance rules in connection with auction procedures.

Rules Prohibiting Collusion. The Commission adopts the anti-collusion rules proposed in the NPRM with one modification, as explained below. Under these rules, bidders must identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders are also required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In the NPRM, the Commission proposed that after short-form applications are filed, and prior to the time the winning bidder has submitted the balance of its bid, all applicants should be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other applicants for construction permits serving the same or overlapping geographic areas, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. The Commission adopts this prohibition, but extends it only until the winning bidder has submitted its 20 percent down payment, and not until the winning bidder has submitted the balance of its bid. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the same or overlapping geographic areas from which the first applicant withdrew. In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for construction permits in any of the same or overlapping geographic areas.

DBS applicants may (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits for channels that may be used to cover the same or overlapping geographic areas; and (2) make agreements to bid jointly for construction permits after the filing of short-form applications, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas. In addition, the holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits that may be used to serve the same or overlapping geographic areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas, and (2) the arrangements do not result in any change in control of an applicant.

Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications as provided in the Order.

In adopting these rules, the Commission reminds potential bidders for DBS construction permits that allegations of collusion in a petition to deny may be investigated by the Commission or referred to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules while participating in an auction may be subject to forfeiture of their down payment or their full bid amount, as well as revocation of their license, and may be prohibited from participating in future auctions.

F. Designated Entities

Because of the extremely high implementation costs associated with satellite-based services, the Commission tentatively concluded in the NPRM that no special provisions should be made for designated entities—*i.e.*, small businesses, rural telephone companies, and businesses owned by members of minority groups and women—for the channels currently available at 110° and 148°. The Commission noted, however, that the expeditious implementation of DBS service at the two orbital locations in question might indirectly benefit designated entities by providing new opportunities for them to supply programming and equipment. Having reviewed the comments submitted in this proceeding, the Commission concludes that competition in the delivery of DBS service requires auction rules that will allow expedient assignment of the channels at 110° and 148°. Given the fact that these channels offer enough capacity to provide full DBS service in competition with current video providers, auction rules that put these two construction permits in the hands of entities that can quickly provide competition are in the public interest. No commenters assert that small businesses could attract the capital necessary to provide service on all the channels available at either 110° or 148°.

Accordingly, the Commission will not adopt special provisions for designated entities in the DBS auction for the channels at 110° and 148°, and will not set aside spectrum in this auction for

''independents,'' as suggested by one commenter. Another commenter's statement that small and minority businesses are developing services for the DBS industry confirms the Commission's belief that a wide variety of businesses will be involved in the DBS industry; however, the Commission does not have a record before it sufficient to support adoption of this commenter's suggestion that the Commission provide incentives to encourage companies to team up with small and minority-owned businesses. However, designated entity provisions for future DBS auctions may be appropriate, particularly if spectrum is auctioned in small blocks.

Paperwork Reduction Act

22. The Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Pub. L. No. 104–13, which were proposed in the NPRM and were submitted to the Office of Management and Budget (''OMB'') for approval. The Commission, as part of its continuing effort to reduce paperwork burdens, also invited the general public to comment on the information collections proposed. The Commission received no comments on the proposed collections, and adopts them as originally proposed. The effective date of the new and modified rules that have been adopted falls after the deadline for OMB action under the PRA.

47 CFR Part 100

OMB Approval Number: None.
Title: Direct Broadcast Satellite Service.
Form No.: None.
Type of Review: Approval of existing collection.
Respondents: Businesses or other for profit.
Number of Respondents: 8.
Estimated Time Per Response: 400 hours.
Total Annual Burden: 3200 hours.
Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical and legal qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. See e.g., *Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference,* 90 FCC 2d 676 (1982), *recon. denied,* 53 RR 2d 1637 (1983); *CBS, Inc.,* 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.,* 1 FCC Rcd 20, 21 (1986); and *United States Satellite Broadcasting Co.,* 3 FCC Rcd 6858, 6861–62 (1988). Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in IB Docket No. 95–168/PP Docket No. 93–253. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need and Purpose of Rules

This rulemaking proceeding modifies the licensing and service rules for the DBS service. It also adopts rules for competitive bidding in the DBS service based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive applications for authorizations under certain circumstances. Our objectives have been to promote efficiency and innovation in the licensing and use of the electromagnetic spectrum, to develop competitive and innovative communications systems, and to promote effective and adaptive regulations.

B. Issues Raised by the Public in Response to the Initial Analysis

No comments were received specifically in response to the Initial Regulatory Flexibility Analysis. We have, however, taken into account all issues raised by the public in response to the proposed rules. In certain instances, we have eliminated or modified rules in response to those comments.

C. Significant Alternatives Considered

We have attempted to balance all the commenters' concerns with our public interest mandate under the Communications Act in order to update the existing ''interim'' rules in the DBS service. We will continue to examine these rules in an effort to eliminate unnecessary regulations and to minimize significant economic impact on small businesses.

Ordering Clauses

Accordingly, IT IS ORDERED that Part 100 of the Commission's Rules is amended as specified below.

24. It is Further Ordered that the one-time auction spectrum limitation discussed above Will be Implemented in connection with the auction of the construction permits for the use of 28 DBS channels at the 110° orbital location and 24 channels at the 148° orbital location.

25. It is Further Ordered that the amendments to Part 100 adopted herein and the one-time auction spectrum limitation discussed above Will Become Effective January 19, 1996. This action is taken pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, and 309(j).

26. It is Further Ordered that, pursuant to 47 U.S.C. § 155(c), the Chief, Wireless Telecommunications Bureau, is granted Delegated Authority to implement and modify auction procedures in the DBS service, including the general design and timing of an auction, the number of authorizations to be offered in an auction, the manner of submitting bids, minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, and to announce such procedures by Public Notice.

27. It is Further Ordered that condition (a) placed on the construction permit of Tempo Satellite, Inc. in *Tempo Satellite, Inc.,* 7 FCC Rcd 2728, 2732 (1992), which imposed certain marketing restrictions, is Rescinded.

28. It is Further Ordered that the proceeding in IB Docket No. 95–168 is hereby terminated.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 100 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 100—DIRECT BROADCAST SATELLITE SERVICE

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

Authority: 47 U.S.C. 154, 303, 309, and 554, unless otherwise noted.

2. Section 100.17 is revised to read as follows:

§ 100.17 License term.

(a) Licenses for non-broadcast facilities governed by this part will be issued for a period of ten (10) years. Licenses for broadcast facilities governed by this part will be issued for a period of five (5) years.

3. Section 100.19 is revised to read as follows:

§ 100.19 Due diligence requirements.

(a) All persons granted DBS authorizations shall proceed with diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the construction permit. The satellite stations shall also be required to be in operation within six years of the construction permit grant.

(b) In addition to the requirements stated in paragraph (a) of this section, all persons who receive new or additional DBS construction permits after January 19, 1996 shall complete construction of the first satellite in their respective DBS systems within four years of the grant of the construction permit. All satellite stations in such a DBS system shall be in operation within six years of the grant of the construction permit.

(c) DBS permittees and licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the construction permit shall not be considered to justify extension of these deadlines.

4. A new Section 100.53 is added to Subpart D to read as follows:

§ 100.53 Geographic service requirements.

(a) Those holding DBS permits or licenses as of January 19, 1996 must either:

(1) Provide DBS service to Alaska and Hawaii from one or more orbital locations before the expiration of their current authorizations; or

(2) Relinquish their western DBS orbital/channel assignments at the following orbital locations: 148° W.L., 157°W.L., 166° W.L., and 175° W.L.

(b) Those acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location.

A new subpart E consisting of §§ 100.71 through 100.80 is added to Part 100 to read as follows:

Subpart E—Competitive Bidding Procedures for DBS

Sec.

100.71 DBS subject to competitive bidding.
100.72 Competitive bidding design for DBS construction permits.
100.73 Competitive bidding mechanisms.
100.74 Withdrawal, default and disqualification payments.
100.75 Bidding application (FCC Form 175 and 175–S Short-form).
100.76 Submission of upfront payments and down payments.
100.77 Long-form applications.
100.78 Permit grant, denial, default, and disqualification.
100.79 Prohibition of collusion.
100.80 Transfer disclosure.

§ 100.71 DBS subject to competitive bidding.

Mutually exclusive initial applications to provide DBS service are subject to competitive bidding procedures. The general competitive bidding procedures found in Part 1, Subpart Q of this chapter, will apply unless otherwise provided in this part.

§ 100.72 Competitive bidding design for DBS construction permits.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide DBS service:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions;

(3) Combined sealed bid-oral auctions;

(4) Sequential multiple round electronic auctions; or

(5) Simultaneous multiple round auctions.

(b) The Wireless Telecommunications Bureau may design and test alternative procedures. The Wireless Telecommunications Bureau will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Wireless Telecommunications Bureau may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of construction permits, in addition to bids on individual construction permits. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction design.

(d) The Wireless Telecommunications Bureau may use single combined auctions, which combine bidding for two or more substitutable construction permits and award construction permits to the highest bidders until the available construction permits are exhausted. This technique may be used in conjunction with any type of auction.

§ 100.73 Competitive bidding mechanisms.

(a) *Sequencing.* In sequential auctions, the Wireless Telecommunications Bureau will generally auction DBS construction permits in order of their estimated value, with the highest value construction permit being auctioned first. The Wireless Telecommunications Bureau may vary the sequence in which DBS construction permits will be auctioned.

(b) *Grouping.* All DBS channels available for a particular orbital location will be auctioned as a block, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme. In the event the Wireless Telecommunications Bureau uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Wireless Telecommunications Bureau will determine which construction permits will be auctioned simultaneously or in combination.

(c) *Bid Increments and Tie Bids.* The Wireless Telecommunications Bureau may, by announcement before or during an auction, establish, raise or lower minimum bid increments in dollar or percentage terms. The Wireless Telecommunications Bureau may establish and change maximum bid increments during an auction. The Wireless Telecommunications Bureau may also establish by Public Notice a suggested opening bid or a minimum opening bid on each construction permit. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

(d) *Stopping Rules.* The Wireless Telecommunications Bureau may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity Rules.* The Wireless Telecommunications Bureau may establish activity rules which require a minimum amount of bidding activity. In the event that the Wireless Telecommunications Bureau establishes an activity rule in connection with a simultaneous multiple round auction or sequential multiple round electronic auction, each bidder will be automatically granted a certain number of waivers of such rule during the auction.

§ 100.74 Withdrawal, default and disqualification payments.

(a) When the Commission conducts a sequential multiple round electronic auction or simultaneous multiple round auction pursuant to § 100.72, the Wireless Telecommunications Bureau will impose payments on a bidder who withdraws a high bid during the course of the auction, who defaults on payments due, or who is disqualified.

(b) A bidder who withdraws a high bid during the course of such an auction will be assessed a payment equal to the difference between the amount bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(d) When the Commission conducts a sequential multiple round electronic auction, the Wireless Telecommunications Bureau will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit. When the Commission conducts any other type of auction, the Wireless Telecommunications Bureau may bar a bidder who withdraws a bid from continued participation in the bidding for the same construction permit or other construction permits offered in the same auction.

(e) When the Commission conducts any type of auction other than those provided for in paragraphs (a), (b), (c), and (d) of this section, the Wireless Telecommunications Bureau may modify the payments to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified above.

§ 100.75 Bidding application (FCC Form 175 and 175–S Short-form).

All applicants to participate in competitive bidding for DBS construction permits must submit applications on FCC Form 175 pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of DBS construction permits and the date of the auction for those construction permits. This Public Notice also will specify the date on or before which applicants intending to participate in a DBS auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as any upfront payment that must be submitted, and the location where the application must be filed.

§ 100.76 Submission of upfront payments and down payments.

(a) Bidders in DBS auctions will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, the amount of which will be announced by Public Notice prior to each auction.

(b) Winning bidders in a DBS auction must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten (10) business days of the announcement of winning bidders.

§ 100.77 Long-form applications.

Each winning bidder will be required to submit the information described in §§ 100.13, 100.21, and 100.51 within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 100.13 and any associated Public Notices. Only auction winners will be eligible to file applications for DBS construction permits in the event of mutual exclusivity between applicants filing a short-form application.

§ 100.78 Permit grant, denial, default, and disqualification.

(a) Each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the construction permit is ready for grant.

(b) A bidder who withdraws its bid during the course of an auction, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 100.74.

§ 100.79 Prohibition of collusion.

(a) Bidders are required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders are also required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

(b)(1) Except as provided in paragraphs (b)(2), (b)(3) and (b)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder submits its downpayment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits that may be used to serve the same or overlapping geographic areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for construction permits, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for construction permits that may be used to serve the same or overlapping geographic areas, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas; and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(c) Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications pursuant to paragraphs (a) and (b) of this section.

§ 100.80 Transfer disclosure.

Any entity that acquires a DBS license through competitive bidding, and seeks to transfer that license within six years of the initial license grant, must file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. The information submitted must include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration.

[FR Doc. 95–30938 Filed 12–19–95; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 660

RIN 2132–AA54

Buy America Requirements; Removal

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule removes the Buy America requirements which are now obsolete and have been superseded by 49 CFR part 661.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, Office of Chief Counsel, room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–1936.

SUPPLEMENTARY INFORMATION: Section 401 of the Surface Transportation Assistance Act of 1978 (the 1978 STAA) (Public Law No. 95–599) included a Buy America provision applicable for the first time to the Federal Transit Administration (FTA) program. This provision established a preference for products produced, mined or manufactured in the United States. The implementing regulation, 49 CFR part 660, applied these requirements to contracts exceeding $500,000 financed by funds obligated under the 1978 STAA.

Both the statutory and funding authority of the 1978 STAA have now lapsed. FTA's current Buy America requirements are set out at 49 U.S.C. 5323(j) and the implementing regulation, 49 CFR part 661. Because 49 CFR part 660 is now obsolete, FTA finds that it is unnecessary to seek public comment on its removal from the Code of Federal Regulations. Part 660 is being removed as part of the President's ''Reinventing Government'' initiative.

Accordingly, and effective December 20, 1995, FTA is removing 49 CFR Part 660.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties. It merely removes an obsolete regulation. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 660

Grant programs—transportation, Mass transportation.

PART 660—[REMOVED]

Accordingly, for the reasons set forth above, part 660 is hereby removed.

Gordon J. Linton,

Administrator.

[FR Doc. 95–30736 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 121495A]

Atlantic Tuna Fisheries; Bluefin Tuna

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

ACTION: Closure of the General category fishery.

SUMMARY: NMFS has determined that the 10 metric tons (mt) of Atlantic bluefin tuna (ABT) set aside for the late-season General category fishery in the New York Bight beginning October 1, 1995, will have been taken by December 15, 1995. Therefore, the General category fishery will be closed effective at 2330 hours (11:30 pm) on Friday, December 15, 1995. This action is being taken to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: 2330 hours on December 15, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Kevin Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas recommended U.S. quota among the various domestic fishing categories.

Implementing regulations for the Atlantic Tuna Fisheries at 50 CFR 285.22(a) provide for an adjusted annual quota of 550 mt of large medium and giant ABT to be harvested from the Regulatory Area by vessels permitted in the General category. Based on landings

statistics, the fishery was closed on September 12, 1995 (60 FR 48052, September 18, 1995). A transfer of 10 mt from the longline-south Incidental subcategory to the General category adjusted the General category quota to 560 mt (60 FR 51932, October 4, 1995). Furthermore, the 10 mt transfer established a geographic set-aside for the New York Bight fishery to be fished from October 1 until the 10 mt are taken.

Based on landings statistics, NMFS has determined that the late-season quota of ABT allocated for General category vessels fishing in the New York Bight must be closed. Fishing for, retention of, possession of, or landing large medium or giant ABT by vessels in the General category must cease by 2330 hours December 15, 1995. This action is being taken to prevent overharvest of the quota.

This closure of the late-season General category fishery will not affect other categories fishing for ABT. The Incidental catch categories remain open.

Classification

This action is taken under 50 CFR 285.20(b) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 14, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30822 Filed 12–14–95; 4:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 244
Wednesday, December 20, 1995

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0906]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing amendments to Subpart A of Regulation S, which implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA. These proposed amendments update the fees to be charged and streamlines the subpart generally.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Comments should refer to Docket No. R–0906, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 1115 of the RFPA (12 U.S.C. 3415) requires the Board to establish, by regulation, the rates and conditions under which payment is made by a Government authority to a financial institution for searching for, reproducing, or transporting data required or requested under the RFPA. Shortly after the RFPA was adopted, the Board issued Regulation S (12 CFR 219) to implement this provision (44 FR 55812, September 28, 1979). No changes to the rates have been made since that time. In January 1995, the Board adopted a new Subpart B of Regulation S (to become effective on January 1, 1996 [1]) and designated this part of Regulation S as Subpart A. 60 FR 231 (January 3, 1995) No substantive changes were made to the newly designated Subpart A. Pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 4803), the Board has reviewed Subpart A of Regulation S and proposes to update it through these amendments. These amendments streamline the regulation by eliminating unnecessary provisions, and they update the rates to be paid and the exceptions to the provisions of this Subpart.

I. Definitions

The definitions in Subpart A reiterate the statutory definitions from the RFPA for the applicable terms of this Subpart. The definition for ''directly incurred costs'' has been removed and incorporated into the section concerning cost reimbursement.

II. Cost Reimbursement

This section has been streamlined and reorganized to place the rates in a separate Appendix A for clarity and ease of amendment when updating the rates. The proposed amendments also recognize that courts issuing orders or subpoenas in connection with grand jury proceedings must pay the rates set by Subpart A.

[1] In a rulemaking issued on August 24, 1995 (60 FR 44144), the effective date of Subpart B has been delayed until April 1, 1996.

III. Rates

The Board is particularly interested in receiving comments on the rates proposed in Appendix A. It is difficult to establish rates to be applied across all geographic regions and to all depository institutions, regardless of size. While recognizing this difficulty, the Board nevertheless proposes a uniform rate in the belief that administration of a complex fee schedule would be difficult.

A. Reproduction

The rates proposed for reproduction are the same rates used by the Board to charge requesters seeking documents under the Freedom of Information Act (FOIA). The Board establishes its FOIA fees based upon the actual costs of making such reproductions and believes that these costs are similar to those incurred by other entities. The Board welcomes comments on the appropriateness of the proposed fees and any suggested alternative methods of determining the fees.

B. Search and Processing

The proposed fees for search and processing are separated into two categories—clerical/technical and manager/supervisory. Any search for sensitive customer records is likely to involve both clerical staff and managerial staff, who are paid at different levels. The rates set for this reimbursement were calculated using the 1994 Bank Cash Compensation Survey done by the Bank Administration Institute. Based upon the job descriptions in the Cash Compensation Survey, the position of Supervisor, Bookkeeping was used to calculate the managerial rate. The calculation was made based upon the total compensation (with bonus) for all banks on a national average ($27,600) divided by 2080 hours, adjusted up by 25% to cover benefits, and further adjusted by 3% for inflation since 1994. The clerical rate was calculated in the same way, but using an average of the two job positions of Clerk II (Bookkeeping and Operations @ $18,100) and Clerk I (Bookkeeping and Operations @ $15,100). The Board is very interested in receiving comments on the rates and the method of calculation.

IV. Exceptions

This section has been updated to reflect changes in the exceptions listed by the RFPA.

V. Conditions for Payment and Payment Procedures

No substantive changes have been made to these two sections.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605, the Board certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule confers a benefit on financial institutions, including small financial institutions, by providing for reimbursement of certain costs incurred in complying with a requirement to assemble and produce financial records.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0203), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The Right to Financial Privacy Act mandates that each financial institution maintain a record of instances in which it releases a consumer's financial information to a government agency. Generally, the institution may not release records until the government agency has notified the consumer of its intent to request the record, together with the reason for the request. Normally, the agency may not obtain records unless it has a subpoena, a search warrant, or an authorization from the consumer.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act is 7100–0203.

Because the records would be maintained at banks, no issue of confidentiality under the Freedom of Information Act arises.

This proposed regulation, 12 CFR 219, has no effect upon the paperwork burden associated with the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act. That hour burden is estimated to be 22 minutes per response. It is estimated that the frequency of response at state member banks is 30 responses per year. Thus the annual hour burden across the 975 state member banks is estimated to be 10,725 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $214,500.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Federal Reserve System, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR Part 219, as amended at 60 FR 231 and 44144 effective April 1, 1996, is proposed to be amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION)

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

1. The authority citation for Subpart A continues to read as follows:

Authority: 12 U.S.C. 3415

2. Subpart A is amended by revising §§ 219.2 through 219.6 to read as follows:

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

Customer means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts or has acted as a fiduciary in relation to an account maintained in the person's name. Customer does not include corporations or partnerships comprised of more than five persons.

Financial institution means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

Financial record means an original or copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

Government authority means any agency or department of the United States, or any officer, employee or agent thereof.

Person means an individual or a partnership of five or fewer individuals.

§ 219.3 Cost reimbursement.

(a) *Fees payable.* Except as provided in § 219.4, a government authority, or a court issuing an order or subpoena in connection with grand jury proceedings, seeking access to financial records pertaining to a customer shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in Appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) *Search and processing costs.* (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rates specified in Appendix A to this section.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for requested documents are set forth in Appendix A to this section. Copies of photographs, films, computer tapes, and other materials not listed in Appendix A to this section are reimbursed at actual cost.

(d) *Transportation costs.* Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the

requested information, and to convey such material to the place of examination.

Appendix A to § 219.3—Reimbursement Schedule

Reproduction:	
Photocopy, per page	.15
Paper copies of microfiche, per frame	.15
Duplicate microfiche, per microfiche	.30
Computer diskette	5.00
Search and Processing:	
Clerical/Technical, hourly rate	11.00
Manager/Supervisory, hourly rate	17.00

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty or loan insurance program.

(c) *Nonidentifiable information.* Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder.

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to 5 U.S.C. 554, and to which the government authority and the customer are parties.

(i) *Investigation of financial institution or its noncustomer.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at an entity that is not a customer as defined in § 219.2.

(j) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination, or audit directed at a government authority.

(k) *Federal Housing Finance Board requests.* Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal home loan banks in the exercise of the FHFB's authority to extend credit to financial institutions or others.

(l) *Department of Veterans Affairs.* The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that Department.

§ 219.5 Conditions for payment.

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary.

(b) *Compliance with legal process, request, or authorization.* No payment may be made to a financial institution until it satisfactorily complies with the legal process, the formal written request, or the customer authorization. When the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges disclosure to a grand jury or government authority, the financial institution shall be reimbursed for the reasonably necessary costs incurred in assembling the requested financial records prior to the time the financial institution is notified of such event.

(c) *Itemized bill or invoice.* No reimbursement is required unless a financial institution submits an itemized bill or invoice specifically detailing its search and processing, reproduction, and transportation costs.

§ 219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a service of legal process or request, the court or government authority shall notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment and shall furnish an address for this purpose.

(b) *Special notice.* If a grand jury or government authority withdraws the legal process or formal written request, or if the customer revokes the authorization, or if the legal process or request has been successfully challenged by the customer, the grand jury or government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment of costs incurred prior to the time of the notice to the financial institution receives this notice.

3. Section 219.7 is removed.

By order of the Board of Governors of the Federal Reserve System, December 13, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30725 Filed 12–19–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ACE–17]

Proposed Amendment to Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Muscatine Municipal Airport, Muscatine, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the relocated Port City Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Muscatine Municipal Airport.

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air

Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95-ACE–17, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–17.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the relocated Port City VOR/DME at the Muscatine, IA, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE IA E5 Muscatine, IA [Revised]

Muscatine Municipal Airport, IA
(Lat. 41°22′00″ N., long. 91°08′44″ W)
Port City VOR/DME
(Lat. 41°21′59″ N., long. 91°08′57″ W)
Muscatine NDB
(Lat. 41°21′44″ N., long. 91°08′46″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Muscatine Municipal Airport and within 1.4 miles each side of the 067° radial of the Port City VOR/DME extending from the 6-mile radius to 7 miles northeast of the airport and within 2.6 miles each side of the 256° bearing from the Muscatine NDB extending from the 6-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30923 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–16]

Proposed Amendment to Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Hastings Municipal Airport, Hastings, Nebraska. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Hastings Municipal Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–16, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the GPS at the Hastings, Nebraska, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE NE E5 Hastings, NE [Revised]

Hastings Municipal Airport, NE
(Lat. 40°36′16″N., long. 98°25′39″W)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of Hastings Municipal Airport and within 2 miles each side of the 338° bearing from the Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles north of the airport and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southeast of the airport, and within 3 miles each side of the 219° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30922 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–15]

Proposed Amendment to Class E Airspace; Carroll, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Arthur N. Neu Airport, Carroll, Iowa. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System

(GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Arthur N. Neu Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–15, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the GPS at the Arthur N. Neu Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE IA E5 Carroll, IA [Revised]

Arthur N. Neu Airport, IA
(Lat. 42°02′46″N. long. 94°47′20″W)
Carroll NDB
(Lat. 42°02′42″N., long. 94°47′07″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arthur N. Neu Airport and within 2.6 miles each side of the 142° bearing from the Carroll NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30921 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–14]

Proposed Amendment to Class E Airspace; Atlantic, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Atlantic, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional

controlled airspace for aircraft executing the SIAP at Atlantic Municipal Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–14, 601 East 12th Street, Kansas City, MO. 64106

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE 14'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace of a new SIAP based on the GPS at the Atlantic, IA, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation of part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE IA E5 Atlantic, IA [Revised]

Atlantic Municipal Airport, IA
(Lat. 41°24′26″ N., long. 95°02′49″ W)
Atlantic NDB
(Lat. 41°24′26″ N., long. 95°02′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Atlantic Municipal Airport and within 4 miles each side of the 315° bearing from the Atlantic NDB extending from the 6.4-mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30920 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANE–61]

Proposed Amendment to Class E airspace; Worcester, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Worcester, MA (ORH). With the commissioning of the Automated Surface Observation System (ASOS) at the Worcester Municipal Airport, weather reporting is now continuously available at that

airport. This action is necessary to establish controlled airspace extending upward from the surface for aircraft operating under instrument flight rules (IFR) to and from the Worcester Municipal Airport during the times when the air traffic control tower is closed.

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, Docket No. 95–ANE–60, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7040; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, System Management Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, System Management Branch, ANE–533, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed first under **ADDRESSES** above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–ANE–61.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230,800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E surface area at the Worcester Municipal Airport, Worcester, MA (ORH). Since the air traffic control tower (ATCT) at Worcester does not operate continuously, aircraft operating under instrument flight rules (IFR) to and from Worcester would not have had the benefit of weather reports from the airport during the times when the tower is closed. The lack of continuous weather reporting also required that the controlled airspace for Worcester could not extend to the surface. Recently, however, an Automated Surface Observation System (ASOS) has been commissioned at Worcester, making weather reporting now available continuously. As result, this action is necessary to establish controlled airspace extending from the surface for those aircraft operating to and from Worcester under IFR during the times when the ATCT is closed. Class E airspace designations for airspace areas extending upward from the surface of the earth in the vicinity of airports are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore these proposed regulations—(1) are not ''significant regulatory actions'' under Executive Order 12866; (2) are not ''significant rules'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) do not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation, it is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1994, and effective September 16, 1995, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6002 Class E surface areas extending upward from the surface of the earth.

* * * * *

ANE MA E2 Worcester, MA [New]

Worcester Municipal Airport, MA
(Lat. 42°16′02″ N, long. 71°52′32″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Worcester Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter by continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on December 13, 1995.

John J. Boyce, Jr.,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–30917 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36580, International Series Release No. 900, File No. S7–34–95]

RIN 3235–AG68

Exemption of the Securities of the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 (''Rule'') that would designate debt obligations issued by the Federative Republic of Brazil (''Brazil''), the Republic of Argentina (''Argentina''), and the Republic of Venezuela (''Venezuela'') (collectively the ''Proposed Countries'') as ''exempted securities'' for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of the Proposed Countries. This change is not intended to have any substantive effect on the operation of the Rule.

DATES: Comments should be submitted by January 19, 1996.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7–34–95, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942–0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act''). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission (''SEC'' or ''Commission''), however, has adopted Rule 3a12–8 under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, The Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, and Mexico (the ''Designated Foreign Governments''). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 (17 CFR 240.3a12–8) to add the debt obligations of Brazil, Argentina, and Venezuela to the list of Designated Foreign Government securities that are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on debt obligations of the Proposed Countries would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984 [1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, and, most recently, Mexico.[4]

[1] *See* Securities Exchange Act Release Nos. 20708 (''Original Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 (''Original Proposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Original Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. See Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the

Continued

III. Discussion

The Chicago Mercantile Exchange (''CME'') has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of the Proposed Countries.[5] The CME intends to develop a futures contract market in Brady bonds issued by the Proposed Countries.[6] Brady bonds are issued pursuant to the Brady plan which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.[7] The Commission understands that Brady bonds issued by the Proposed Countries are currently traded primarily in the over-the-counter market in the United States.

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,[8] the futures contracts require delivery outside the United States,[9] and the contracts be traded on a board of trade) would continue to apply.

In determining whether to amend the Rule to add new countries, the Commission has considered whether there is an active and liquid secondary trading market in the particular sovereign debt. There appears to be an active and liquid market in the debt instruments of the Proposed Countries. According to the CME, as of December 31, 1993, the total public and publicly guaranteed debt[10] of Brazil, Argentina, and Venezuela was approximately US$86 billion, US$55 billion, and US$74 billion, respectively.[11] Moreover, the cash market for Brady bonds issued by the Proposed Countries evidences relatively active trading. Based on data provided by the CME, the total 1994 trading volume in the Brady bonds of Brazil, Argentina, and Venezuela was approximately US$371 billion, US$360 billion, and US$320 billion, respectively.[12]

In light of the above data, the Commission believes preliminarily that the debt obligations of the Proposed Countries should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments. Moreover, the trading of futures on the sovereign debt of Brazil, Argentina, and Venezuela should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of the Proposed Countries.

In addition, the Commission preliminarily believes that the proposed amendment offers potential benefits for U.S. investors. If adopted, the proposed amendment would allow U.S. boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others. The proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

Section 23(a)(2) of the Exchange Act requires the Commission in amending rules to consider potential impact on competition. Because the proposal is intended to expand the range of financial products available in the United States, the Commission preliminarily believes that the proposed amendment to the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of the Proposed Countries as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of the Proposed Countries' debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between the Proposed Countries and the Designated Foreign Governments for purposes of the Rule. The Commission also solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others. Finally, the Commission seeks comment on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A.

''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). Finally, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) (''Mexico Adopting Release'').

[5] *See* Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated November 10, 1995 (''CME petition'').

[6] The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991).

[7] There are several types of Brady bonds, but ''Par Bradys'' and ''Discount Bradys'' represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

[8] The Commission notes that while no Brady bonds of Proposed Countries have been registered in the United States, certain sovereign debt issues of Argentina and Venezuela have been so registered. The trading of futures on U.S-registered debt securities of Argentina and Venezuela would not be exempted under Rule 3a12–8 from the CEA's general prohibition on futures overlying individual securities.

[9] The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[10] Public debt is an external obligation of a public debtor, including the national government, a political subdivision (or any agency of either) and autonomous public bodies. Publicly guaranteed debt is an external obligation of a private debtor that is guaranteed for repayment by a public entity.

[11] *See* Letter from Carl A. Royal, Senior Vice President and Special Counsel, CME, to James T. McHale, Attorney, OMS, Division, Commission, dated November 30, 1995 (citing the World Bank's 1995 World Debt Tables as the source for this information) (''November 30 letter'').

[12] *See* November 30 letter, *supra* note 11. As mentioned earlier, the Commission recently amended the Rule to include the debt securities of Mexico. The total 1994 trading volume in Mexican Brady bonds was approximately US$282.3 billion. *See* Mexico Adopting Release, *supra* note 4.

VI. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. §§ 78a et seq., particularly Sections 3(a)(12) and 23(a), 15 U.S.C. §§ 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xv), removing the ''period'' at the end of paragraph (a)(1)(xvi) and adding ''; or'' in its place, and adding paragraph (a)(1)(xvii), paragraph (a)(1)(xviii), and paragraph (a)(1)(xix) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xvii) the Federative Republic of Brazil;

(xviii) the Republic of Argentina; or

(xix) the Republic of Venezuela.

* * * * *

By the Commission.

Dated: December 13, 1995.

Jonathan G. Katz,

Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') set forth in Securities Exchange Act Release No. 36580, which would define government debt securities of Brazil, Argentina and Venezuela (collectively the ''Proposed Countries'') as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of the Proposed Countries. Second, because futures contracts on the sixteen countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 27 CFR 240.0–10 and to the extent that it is defined for futures market participants in the Commodity Futures Trading Commission's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act.'' [1]

Dated: December 13, 1995.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 95–30862 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–P

[1] 45 FR 18618 (April 30, 1982).

DEPARTMENT OF STATE

22 CFR Part 89

Bureau of Economic and Business Affairs; Foreign Prohibitions on Longshore Work by U.S. Nationals

[Public Notice No. 2314]

AGENCY: Department of State.

ACTION: Proposed rule; extension of Comment Period.

SUMMARY: On November 24, 1995, the Department of State issued a proposed rulemaking regarding longshore work by foreign nationals in U.S. ports and waters. In response to requests from several interested parties, the Department is extending the deadline for comments by 30 days, from December 26, 1995 to January 26, 1996.

DATES: Interested parties are invited to submit comments in triplicate no later than January 26, 1996.

ADDRESSES: Comments may be mailed to the Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, D.C. 20520–5816.

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647–6961.

SUPPLEMENTARY INFORMATION: On November 24, 1995, the Department of State issued a proposed rulemaking (60 FR 58026) updating the list of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The crews of ships registered in or owned by nationals of the countries on the list may not perform the activities enumerated on the list. Citing the need for more time to assess the full effects of the proposed rule, a number of parties have requested an extension of the comment period. Consequently, the Department will extend the deadline by 30 days, from December 26, 1995 to January 26, 1996.

(8 U.S.C. 1288, Pub. L. 010–649, 104 Stat. 4878)

Dated: December 14, 1995.

Daniel K. Tarullo,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 95–30879 Filed 12–19–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA65

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule addressing the requirements for approval of flame-resistant conveyor belts to be used in underground mines.

DATES: Written comments must be received on or before February 5, 1996.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On October 31, 1995, MSHA published a document in the Federal Register (60 FR 55353) announcing the reopening of the rulemaking record on its proposed standard for flame-resistant conveyor belts used in underground mines. Comment period was scheduled to close on December 15, 1995. By this document, the Agency is extending the comment period to February 5, 1996. All interested parties are encouraged to submit comments prior to that date.

Dated: December 15, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–30990 Filed 12–15–95; 4:08 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Valuation of Oil From Federal and Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to changes in the oil and gas industry and the marketplace, the Minerals Management Service (MMS) is considering amending its regulations regarding the valuation of crude oil produced from or allocated to Federal and Indian leases.

Most Federal and Indian leases provide that the value of production for royalty purposes be determined by the Secretary. This notice is intended to solicit comments on new methodologies to establish the royalty value of oil produced from Federal and Indian leases. MMS specifically seeks comments on the use of crude oil posted prices as a means to value oil not sold under arm's-length conditions, and the meaning and application of the term ''significant quantities''.

DATES: Comments must be received on or before March 19, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding valuation issues should be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165, Attention: David S. Guzy, telephone (303) 231–3432, fax (303) 231–3194.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, MMS Royalty Management Program, at telephone (303) 231–3432, fax (303) 231–3491, e-mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

All Federal and Indian oil and gas leases contain provisions for the determination of royalty obligations.

Most of these Federal and Indian leases reserve to the Secretary considerable discretion in determining value for royalty purposes. This Advance Notice of Proposed Rulemaking is intended to solicit comments on new methodologies to establish value for crude oil production from Federal and Indian leases. Comments received in response to this Advance Notice will be considered in the development of a proposed rulemaking that MMS will publish in the Federal Register.

In conjunction with the lease terms, the valuation of oil production from Federal and Indian leases is subject to the regulations at 30 CFR Part 206, Subpart C—Federal and Indian Oil. The present regulations govern the valuation of production from both Federal and Indian (Tribal and allotted) leases (except leases on the Osage Indian Reservation, Oklahoma). MMS believes it could provide an improved regulatory framework in which lease terms could be strictly enforced while requiring little or no extra information from lessees.

MMS may issue separate regulations to value oil from Indian leases because of the Secretary's trust obligation in the administration of Indian oil and gas leases. In view of this obligation, the Secretary must ensure that Indians receive the maximum benefits from mineral resources on their lands. Thus, the value of production for royalty purposes from an Indian lease should be determined considering the higher reasonable values provided by the terms of the standard lease. MMS believes this goal is consistent with: the terms of these Indian oil and gas leases, the statutes governing Indian oil and gas leases, and court decisions providing judicial guidance in the interpretation and administration of Indian oil and gas leases. Specific comments are requested on issuing separate regulations for valuing oil from Indian leases.

II. Discussion of Alternatives

The Secretary's responsibility to determine the royalty value of oil produced from Federal and Indian lands has not changed, although the industry and marketplace have changed dramatically over the years. Specifically, oil posted prices may no longer represent the price a purchaser is willing to pay for a particular crude oil. MMS plans to develop a set of regulations to permit the Secretary to discharge the Department's royalty valuation responsibility in an environment of continuing and accelerating change in the industry and the marketplace. Given the ever-changing marketplace, the Secretary's responsibilities regarding oil production from Federal and Indian leases require development of flexible valuation methodologies that lessees can comply with accurately and timely. MMS specifically seeks to improve oil valuation regarding the use of oil posted prices, including methods of determining ''significant quantities.'' A discussion of these areas follows:

(a) Oil Posted Prices, Including Effects on Existing Valuation Benchmarks for Oil Not Sold Under Arm's-Length Contract

MMS is considering modifying or replacing the current benchmark system at 30 CFR 206.102(c) used to value oil not sold under arm's-length contracts. MMS believes that the current regulations may place too much emphasis on posted prices—the lessee's and others'. The first two of the five benchmarks rely on postings if a significant quantity of like-quality crude is purchased or sold at such postings in a field or area. Likewise, the third benchmark relies at least partly on postings because it applies the average of arm's-length contract prices, which often are tied to postings, for purchases or sales of significant quantities of oil in the area. (The fourth benchmark relies on spot sales and other relevant matters, and the fifth relies on a net-back or any other reasonable method to determine value.)

MMS recently has received information indicating that oil posted prices don't always reflect market value and in fact may often be no more than a beginning point for negotiation.

MMS has found numerous examples where crude oil purchasers pay premiums over the posted price. Further, consultation with private consultants, various State government personnel, and other non-Federal

royalty-owners indicates a consistent belief that oil posted prices may not represent market value. And, while posted prices historically were presumed to represent actual prices offered for a particular crude oil, postings no longer necessarily represent an offer to buy at that price.

Revising the benchmark system in the regulations could remove some of the current heavy reliance on posted oil prices and provide MMS more flexibility in determining proper royalty value.

MMS is soliciting comments on the continued applicability of oil posted prices as a fair and reasonable indicator of royalty value. Specifically, MMS seeks input on how oil marketing takes place today and whether and how oil posted prices typically factor into oil sales/purchases/exchanges.

MMS invites specific comments on various aspects of posted prices as applied to crude oil sales and royalty value for Federal and Indian leases, including the option of separate oil valuation regulations for Indian leases. MMS would like examples demonstrating whether crude oil price postings form the true basis for oil values in given fields or areas—and, to the extent possible, nationwide. And, if the commenter feels postings don't reflect market value for the field or area, MMS would like specific suggested alternative royalty valuation methodologies for oil not sold under arm's-length conditions. That is, if postings don't reflect market value and because the existing benchmarks for oil not sold under arm's-length conditions rely heavily on posted prices, what are some suggested alternative valuation benchmarks? For example:

- Are there indices or other published prices that better reflect actual market value than oil postings?
- Where prices posted by individual companies differ considerably within the same field or area, how are these differences best reconciled?
- Are there fixed ''reference'' prices against which quality, transportation, and other adjustments can be made to develop reasonable royalty values (e.g., West Texas Intermediate)?
- Are spot prices of sufficient reliability and do they cover wide enough geographic areas to use as value bases?
- Do oil ''futures'' prices provide meaningful bases for royalty valuation?
- What alternative valuation method(s) best balance the needs to (a) reflect the market value of the oil as sold, exchanged, or otherwise disposed of; and (b) maximize administrative efficiency for all concerned? (Please consider the amount of information needed by the lessee and MMS, and the overall administrative costs of all parties.)

For royalty valuation involving arm's-length transactions, MMS generally accepts the contractual terms, which may include postings. MMS further requests comments on whether the use of alternative methods for valuing oil not sold under arm's-length conditions would impact the acceptability of posted prices for valuing oil sold at arm's-length.

(b) Quantifying ''Significant Quantities'' of Oil

The current MMS royalty valuation benchmarks for oil not sold under arm's-length contract rely on ''significant quantity'' determinations. Under the benchmarks, the lessee's or others' posted or contract prices used in arm's-length purchases or sales of ''significant quantities'' of like-quality oil from the same field or area establish royalty value. The first applicable of the five benchmarks is to be used, and the first four rely on ''significant quantity'' determinations. For example, if the lessee sells ''significant quantities'' of its field production at arm's-length, the arm's-length contract sales price may apply to the lessee's other, internally-transferred crude oil from the same field. But the existing regulations contain no fixed definition of ''significant quantities,'' either on an absolute or relative basis. Thus, MMS would like comments on the best ways to determine what constitutes ''significant quantities.'' For example:

- Is there an absolute volume measure (barrels per day/month/year, etc.) that would allow MMS to determine whether specific arm's-length sales involve ''significant quantities''? If so, should this volume vary by field or area?
- Is there a fixed percentage of field or area production that MMS can use as a comparison basis to determine whether specific arm's-length sales represent ''significant quantities''?
- What should be the comparative basis for ''significant quantity'' determinations? Should individual arm's-length transactions be related to *all* field production, or should some volumes such as internal company transfers of production or exchanges or buy/sell exchanges with other oil companies first be excluded from field production?
- Are there measures other than ''significant quantities'' that may better apply given alternative valuation scenarios?

In providing comments on (a) and (b) above, please consider not only current oil marketing practices, but also any changes that may be foreseen. MMS intends for any oil valuation rule changes to be flexible enough to accommodate future oil marketing changes as much as possible to avoid ongoing rule modification.

In addition to comments on (a) and (b) above, MMS would like comments on the process to use and make potential changes to the oil valuation rules. Specifically, MMS would like comments on whether any oil valuation regulatory changes should be subject to negotiated rulemaking procedures or other consensual mechanisms for developing regulations.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 95–30767 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–110, Amendment Number 93–7, Part II]

Indiana Permanent Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing receipt of additional changes to an amendment previously submitted by Indiana as a modification to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The changes add new language concerning minor field revisions to the second of three subparts of the original amendment. The changes are intended to incorporate language desired by the State.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on

January 4, 1996; if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. on January 3, 1996; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 2, 1996.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

Since July 29, 1982, (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), on August 24, 1988 (Regulatory Reform II), and on September 20, 1989 (Regulatory Reform III), that a number of Indiana regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated December 30, 1993 (Administrative Record No. IND–1322), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package (number 93–7) consisting of revisions to 38 sections of the Indiana rules. These revisions address changes to the Indiana program that were identified in the three letters referred to above, and certain required program amendments. The State has also proposed additional changes which Indiana believes will further improve the approved State program. The primary focus of the submittal is on soil capability and restoration standards, individual civil penalties, significant/non-significant revisions, coal exploration, and performance bonds.

OSM announced receipt of the proposed amendment in the January 24, 1994, Federal Register (59 FR 3528), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 24, 1994.

By letter dated December 6, 1995 (Administrative Record Number IND–1415), Indiana submitted additional minor changes to amendment 93–7.

By letter dated January 12, 1995 (Administrative Record Number IND–1423), OSM provided Indiana with comments concerning the proposed amendment. Indiana responded by letter dated January 25, 1995 (Administrative Record Number IND–1419). In that letter, Indiana said that it wishes to separate amendment 93–7 into three subparts. OSM approved the amendments contained in subpart I on November 9, 1995 (60 FR 56516).

By letter dated May 5, 1995 (Administrative Record Number IND–1462), Indiana submitted additional minor changes to subpart II of amendment 93–7, and added a new subparagraph at 301 IAC 12–3–121(d) concerning minor field revisions.

Indiana proposes to add the following language.

310 IAC 12–3–121(d).

If the director determines on a case-by-case basis or by policy guidelines that the conditions of paragraph (c) of this section are met and that the proposed change does not require technical review or design analysis, the proposed change may be approved as a minor field revision by the field inspector in the inspection report or on a form signed in the field. Minor field revisions must be properly documented and separately filed and may include, but are not necessarily limited to, the following:

(1) Soil stockpile locations and configurations.

(2) As-built pond certifications.

(3) Minor transportation facilities changes.

(4) Pond depth/shape/orientation.

(5) Temporary drainage control/water storage areas.

(6) Equipment changes.

(7) Explosive storage areas.

(8) Minor mine management/support facility locations (not refuse).

(9) Adding United States Soil Conservation Service conservation practices.

(10) Methods of erosion protection on diversions.

(11) Temporary cessation orders.

(12) Minor diversion location changes.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on January 2, 1996. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard.

Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES.** A summary of the meeting will be included in the Administrative Record.

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 12, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–30948 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–95–065]

Drawbridge Operation Regulations; Nacote Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the New Jersey Department of Transportation (NJDOT), the Coast Guard is proposing to change the regulations governing operation of the Route 9 Bridge across Nacote Creek, mile 1.5, in Smithville, Atlantic County, New Jersey. This proposal would require the Route 9 Bridge to open on signal except during the period from 11 p.m. to 7 a.m., when a two-hour advance notice for openings would be required. This change should help relieve the bridge owner of the burden of having a bridgetender constantly available at times when there are few or no quests for openings, while still proving for the needs of navigation.

DATE: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments may be mailed to Commander, Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5073, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7170. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator-NY, Fifth Coast Guard District, (212) 668–6969.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–95–065), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Mr. J. Arca, Fifth Coast Guard District, Bridge

Branch-NY, Project Officer, and CAPT R.A. Knee, Fifth Coast Guard District Legal Office, Project Counsel.

Background and Purpose

The Route 9 Bridge across Nacote Creek, mile 1.5, at Smithville, Atlantic County, NJ, has a vertical clearance of 5′ above mean high water (MHW) and 8′ above mean low water (MLW) in the closed position. The current regulations require the bridge to open on signal at all times.

Review of the bridge logs provided by NJDOT reveals that from 11 p.m. to 7 a.m., there were no requests for bridge openings in 1992 and 1993, and only 13 requests for openings in 1994 during these hours. NJDOT is seeking relief from the requirement that a bridgetender be present during the hours of 11 p.m. to 7 a.m. when there are minimal requests for openings.

The New Jersey Department of Transportation requested that the Coast Guard make a permanent change to the regulations governing operation of the Route 9 Bridge to require the draw to open on signal except from 11 p.m. to 7 a.m., which would require a two-hour advance notice. At all other times, the bridge would open on signal. The bridgetenders would be on call to open the draw when the advance notice is given. A 24-hour special telephone number would be posted on the bridge and maintained by the NJDOT.

Accordingly, a new provision allowing the draw of the Route 9 bridge, at mile 1.5, to remain closed during late night and early morning hours unless two hours advance notice is given will be designated as paragraph (a). The current provision allowing the draw of the Atlantic County (Rte. 575) bridge, at mile 3.5, to remain closed unless eight hours advance notice is given will be designated as paragraph (b). A general provision requiring the passage of Federal, State, and local government vessels used for public safety through all drawbridges in published at 33 CFR 117.31, and is no longer required to be published for each waterway. Therefore, this proposal would remove a provision requiring passage of public vessels from section 117.732.

Regulatory Evaluation

The proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the rule will not prevent mariners from transiting the bridge. It will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, July 29, 1994), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.732 is revised to read as follows:

§ 117.732 Nacote Creek.

(a) The Route 9 bridge, mile 1.5, shall open on signal except that from 11 p.m. to 7 a.m., the draw shall open if at least two hours advance notice is given.

(b) The draw of the Atlantic County (Rte. 575) bridge, mile 3.5, at Port Republic, shall open on signal if at least eight hours advance notice is given.

Dated: November 22, 1995.

W.J. Ecker,

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

[FR Doc. 95–30967 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5399–8]

Proposed Removal of Federal Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In December 1994, under the authority of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) promulgated a rule establishing four sets of water quality criteria to protect the designated uses for the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta). Subsequent to this promulgation, the State of California adopted water quality standards for the Bay/Delta and submitted them to EPA for approval. On September 26, 1995, the Regional Administrator for EPA Region IX approved the state water quality standards as protective of the designated uses for the relevant waterbodies. Currently, the State of California is in the process of implementing these state-adopted and EPA-approved water quality standards through a state water rights hearing

process. Accordingly, EPA's promulgated water quality standards are no longer needed to meet the requirements of the Clean Water Act. Therefore, EPA proposes to remove the rule.

DATES: Comments on this proposal will be accepted until March 19, 1996.

ADDRESSES: Comments should be addressed to Palma Risler, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Palma Risler, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, 415–744–2017. The public record for this rulemaking is available through this contact at this same address.

SUPPLEMENTARY INFORMATION:

Background

In December 1994, under the authority of section 303 of the CWA, EPA promulgated a rule establishing four sets of water quality criteria to protect the designated uses for the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta)(60 FR 4664, January 24, 1995). These criteria consisted of estuarine habitat criteria (consisting of a salinity requirement measured at three different locations in Suisun Bay for a specified number of days during the critical spring months), fish migration criteria (consisting of an indexed value representing successful fish migration on the Sacramento River and the San Joaquin River), fish spawning criteria on the lower San Joaquin River (consisting of a salinity requirement measured at various points in April and May), and narrative criteria protecting the brackish tidal marshes in Suisun Marsh. A description of these criteria are provided in the preamble to the final rule and in the rulemaking record.

Prior to federal promulgation of the water quality standards for the Bay/Delta, EPA, the Bureau of Reclamation and Fish and Wildlife Service of the U.S. Department of Interior, and the National Marine Fisheries Service of the U.S. Department of Commerce worked with the State of California to attempt to resolve the water quality issues in the Bay/Delta underlying EPA's rulemaking. This effort led to an agreement, informally called the ''Bay Delta Accords'' signed by the federal agencies, California state agencies, and interested stakeholders. These Bay Delta Accords, signed by all the parties in December 1994, articulate both substantive measures and processes to protect the Bay/Delta estuary, and laid out the framework for the adoption, review, and approval of the new State standards.

On May 22, 1995, the California State Water Resources Control Board adopted water quality standards for the Bay/Delta in its water quality control plan (1995 WQCP). After these revised standards were approved by the California Office of Administrative Law in accordance with California law, the revised standards were submitted to EPA for its review under section 303(c) of the CWA on July 27, 1995. On September 26, 1995, the EPA Regional Administrator for Region IX approved these standards as protective of the designated uses for the Bay/Delta. The reasons for this approval are set forth in the approval letter and are supplemented by additional information in the rulemaking record. Both the approval letter and this supporting information are included in the public record for this rulemaking.

The CWA gives the states primary responsibility for adopting water quality standards. Throughout the rulemaking process to promulgate federal water quality standards for the Bay/Delta, EPA has maintained that it would withdraw the federal standards if the State adopts and submits standards to the Agency that meet the requirements of the Act. EPA also indicated this intent in the Bay Delta Accords.

EPA recognizes that with the exception of the Suisun Bay narrative criteria,[1] the State's 1995 WQCP provisions are not precisely identical to the federal promulgation. Nevertheless, for the reasons set forth in EPA's approval, the Technical Support Memorandum dated September 21, 1995, underlying the approval, and this rulemaking record, EPA found that the provisions in the 1995 WQCP protect the designated uses of the estuary and otherwise meet the requirements of the CWA. The state is currently implementing these standards. Accordingly, the EPA rule is no longer needed to meet the requirements of the CWA, and EPA proposes to remove the rule at 40 CFR 131.37.

EPA understands that the 1995 WQCP is the subject of state court litigation raising both procedural and substantive challenges to the plan. Although EPA believes that the State Board should ultimately prevail in this litigation, there is always a possibility in such litigation for adverse court actions affecting the 1995 WQCP. Should EPA proceed to final withdrawal of the federal water quality standards as proposed in this notice, and the 1995 WQCP is subsequently rejected or remanded, there would be no water quality standards in effect in California carrying out the Bay Delta Accords. EPA intends to work with the State so that if this situation were to arise, the requirements of the Clean Water Act and the purposes of the Bay Delta Accords are achieved.

Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (56 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the order (i.e, Regulatory Impact Analysis and review by the Office of Management and Budget). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this order. Pursuant to the terms of this order, EPA has determined that the withdrawal of this rule would not be ''significant.''

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is certifying that a withdrawal of this rule would not have significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

There are no information collection requirements associated with the withdrawal of this rule that are covered under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

[1] The State's 1995 WQCP includes a description of ''beneficial uses'' of the Bay/Delta waters and a set of ''objectives'' that protect those beneficial uses. In its review of the 1995 WQCP, and in keeping with past practice, EPA is treating the State's beneficial uses and objectives as the ''designated uses'' and ''criteria'' required under the federal Clean Water Act. To avoid confusion, this document will generally use the federal terms ''designated uses'' and ''criteria.''

D. Unfunded Mandates

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

Today's proposal contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments or the private sector. In fact, removing the federal water quality standards for the Bay/Delta will facilitate the State of California's implementation of the state adopted and EPA-approved water quality standards for the Bay/Delta.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards, Water quality criteria.

Dated: December 14, 1995.

Carol M. Browner,

Administrator.

Part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—[AMENDED]

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.37 [Removed and reserved]

2. Section 131.37 is removed and reserved.

[FR Doc. 95–30985 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR PART 300

[FRL–5346–9]

Lewisburg Dump Superfund Site, Lewisburg, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete.

SUMMARY: The Environmental Protection Agency (EPA), Region IV, announces its intent to delete the Lewisburg Dump site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated by EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Tennessee Department of the Environment & Conservation have determined that the site no longer poses a significant threat to public health or the environment and, therefore, further CERCLA remedial measures are not appropriate.

DATES: A 30-Day Public Comment Period (December 11, 1995 to January 11, 1996) has been established for the Lewisburg Dump site deletion proposal. Comments concerning the proposal may be submitted by January 11, 1996.

ADDRESSES: Comments may be mailed to: Femi Akindele, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365.

Comprehensive information on this site is available for review at the following site information repositories.

Marshall County Memorial Library, 310 Farmington Pike, Lewisburg, TN 37091.

U.S. EPA Record Center, 345 Courtland St., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Femi Akindele, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365, 404–347–3555 EXT. 2042 or 1–800–435–9233 EXT 2042.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is to announce EPA's intent to delete the Lewisburg Dump site from the NPL. It also serves to request public comments on the deletion proposal.

EPA identifies sites that appear to present a significant risk to public health, welfare, or environment and maintains the NPL as the list of these sites. Sites on the NPL qualify for remedial responses financed by the Hazardous Substances Response Trust Fund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions. EPA accepts comments on the proposal to delete a site from the NPL for thirty days after publication of this notice in the Federal Register.

NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether the site has met any of the following criteria for site deletion:

(i) Responsible or other parties have implemented all appropriate response actions required.

(ii) All appropriate response actions under CERCLA have been implemented and no further response actions are deemed necessary.

(iii) Remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, no remedial action is appropriate.

Deletion Procedures

The following procedures were used for the intended deletion of this site:

(1) EPA Region IV issued a Final Close Out Report in September 1993, which addressed the site conditions, quality assurance and control during construction, and technical criteria for satisfying the completion requirements.

(2) Concurrent with this announcement, a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on the Notice of Intent to Delete.

(3) EPA has made all relevant documents available for public review at the information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned earlier, Section 300.425(e)(30) of the NCP states that deletion of a site from the NPL does not preclude eligibility of the site for future Fund-financed response actions.

For the deletion of this site, EPA will accept and evaluate public comments on this Notice of Intent to Delete before finalizing the decision. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received during the comment period. The deletion is finalized after the Regional Administrator places a Notice of Deletion in the Federal Register.

Basis for Intended Lewisburg Dump Site Deletion

The following is a summary of activities on the Lewisburg Dump Site. It provides EPA's rationale for the proposed deletion.

The site is a 20-acre tract of farmland located less than one mile north of Lewisburg, Tennessee. It contains an abandoned six acre limestone quarry and a pond. The City of Lewisburg owned and operated the dump which used about four acres at the western portion of the quarry for landfill operations from the late 1950s to 1979. The landfill was open to all residential and industrial dumpers. City records have indicated that several surrounding communities hauled wastes to the dump.

In 1973, a study was conducted by the Tennessee Department of Public Health (TDPH) which indicated that the old quarry was unfit for a sanitary landfill. Also, in the early 1970s, the City submitted plans to TDPH for an on-site incinerator, interim maintenance, and final closure of the dump. In 1977, preliminary closure of the landfill began as soil was applied to cover the wastes. In 1979, final closure of the landfill was conducted.

EPA initially inspected and assessed the conditions of the site in 1982. Among the wastes observed during the inspection were adhesives, paint stripper, empty pails coated with yellow lacquer, metal cuttings, sawdust, pencil cores, cosmetic powders and shoe linings. Results of the assessment indicated the presence of organic and inorganic compounds including lead, toluene, PCB, chlordane, and phenol. After evaluating the conditions of the landfill, EPA added Lewisburg Dump to the NPL in December 1982.

In 1985, EPA contacted a group of companies, agencies, and individuals who were identified as potentially responsible for the wastes at the dump to address the problem. The City of Lewisburg and other potentially responsible parties (PRPs) formed the Lewisburg Environmental Response Committee (LERC) to conduct a Remedial Investigation/Feasibility Study (RI/FS) on the site. The study was conducted under the terms of an Administrative Order on Consent which the PRPs entered into with EPA.

The RI/FS, which was completed in 1990, confirmed the presence of contaminants at the site. Organic and inorganic compounds were detected in the landfill soil, shallow aquifers beneath the site, and in the abandoned quarry pond.

The most prevalent organic contaminants at the site were bis(2-ethylhexyl)phthalate, (DEHP), methylene chloride, xylene, ethylbenzene, 4-methyl-2-pentanone, 2-butanone, carbon disulfide, and toluene. The most common inorganic contaminants were copper, chromium, aluminum, arsenic, iron, lead, manganese, mercury, barium, and zinc. Of these contaminants, only DEHP and copper were detected at levels of significant concern. No contaminants were detected at appreciable concentrations outside the site.

The RI/FS results indicated that, although contaminant concentrations were generally insignificant, the wide variety of the compounds was of concern. Other concerns noted were that the compounds had the potential to become exposed by landfill cap deterioration, the open access to the site and possible disturbance of landfill constituents. In addition, there was potential for increased groundwater contamination and leachate generation if site conditions were not improved.

Special studies, including well surveys and dye trace analyses were conducted in the area of the site to evaluate groundwater conditions since most residences had water wells. The well survey identified 123 households within a 2 mile radius of the site with a minimum of one well on each property. Approximately 70 of these households were utilizing groundwater from wells for domestic or livestock purposes. However, most residences near the site were connected to the municipal water supply. No industrial or municipal wells were found in the survey area. The dye trace studies did not indicate an immediate effect of the site on the domestic wells.

In order to alleviate potential adverse effects of the site on human health and the environment, the RI/FS evaluated several possible remedial measures. Based on the results, EPA issued a Record of Decision (ROD) in September 1990, which described the remedy selected for the site. The major components of the selected remedy were: (1) removal and disposal of all site surface debris, (2) removal and disposal of all debris in the quarry pond, (3) replacement of plastic test-pit caps with landfill cap material, (4) regrading of the landfill cap, (5) implementation of institutional controls, and (6) long-term monitoring and analysis.

Soon after the ROD was issued, EPA requested the PRPS to implement and fund the selected remedy. The PRPs agreed and signed a Consent Decree in 1991 to perform the work. All remedial activities were completed between September 4, 1992, and September 20, 1993. The Remedial Action Report submitted by the PRPs indicated that 382 cubic yards of debris/soil, 172 tires, 50 empty drums and 2 drums containing lead paint and sludge were removed from the site. These were disposed of at properly permitted facilities. EPA and TDEC performed a final site work inspection in September 1993, and determined that the Remedial Action (RA) had been successfully executed.

Following the RA completion, the PRPs initiated site maintenance and monitoring activities, including regular site inspection and groundwater sampling. Laboratory results and other reports on these activities have confirmed that the cleanup work at Lewisburg Dump was successful and that the site no longer poses a threat to human health or the environment.

The PRPs will continue to monitor the groundwater periodically and report results to EPA as stipulated in the 1991 Consent Decree. TDEC will provide necessary oversight.

The Consent Decree required the PRPs to place deed restrictions on the property. The deed restrictions were recorded with the Office of the Hamilton County Register on August 19, 1993.

Throughout this project, EPA conducted active community relations activities to ensure that the local residents were well informed about the different activities occurring at the site. These included the development of Community Relations Plans, public meetings, and routine publications of progress report fact sheets. A public meeting presenting the Proposed Plan was held on July 25, 1990 in Lewisburg, Tennessee. Public comments on the selected remedy were addressed in the 1990 ROD, and site information was placed at the repository in a local library. A Pre-Construction meeting was held on August 17, 1992 in Lewisburg to discuss the start of cleanup activities with the community. In December 1993, EPA announced the end of site cleanup activities in the local newspaper after the final RA inspection.

EPA provided oversight and involved the State in the evaluation and approval of work conducted by the PRPs at the site. The Remedial Design (RD), RA contract, and RA Work Plan were carefully reviewed by EPA and TDEC for compliance with all quality assurance/quality control (QA/QC) procedures. EPA reviewed or developed site evaluations, project plans, technical and material specifications, construction, installation, testing, and sampling requirements and procedures

for all laboratory analyses. Work Plans were developed as necessary by contractors which specified appropriate QA/QC measures for all cleanup activities. EPA reviewed and approved the QA/QC plans which, in general, were based on the protocols in the U.S. EPA, Region IV.

Consistent with EPA guidance, a five year review of this project is necessary to ensure continued protection of human health and the environment. The statutory review will be conducted according to the Office of Solid Waste and Emergency Response Directive 9355.7–02, ''Structure and Components of the Five year Reviews''.

The five-year period begins with the date of RA contract award which, for this project, is September 8, 1992. Therefore, the review should be completed prior to September 8, 1997.

In conclusion, EPA, with the concurrence of the State, has determined that all appropriate remedial actions at the Lewisburg Dump site under CERCLA have been completed. The site no longer poses a threat to human health or the environment. Therefore, EPA proposes to delete the site from the NPL and requests public comments on the proposal.

Dated: November 27, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA, Region IV.

[FR Doc. 95–30798 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–179; RM–8728]

Radio Broadcasting Services; Cassville and Kimberling City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kevin M. and Patricia W. Wodlinger, proposing the substitution of Channel 261C2 for Channel 261A at Cassville, Missouri, reallotment of Channel 261C2 to Kimberling City, Missouri, and modification of the license for Station KRLK accordingly. The coordinates for Channel 261C2 at Kimberling City are 36–30–00 and 93–23–00. We shall propose to modify the license for Station KRLK in accordance with Sections 1.420(g) and (i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availaility of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 5, 1996, and reply comments on or before February 20, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 1447, Mount Pleasant, South Carolina 29465.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–179, adopted December 6, 1995, and released December 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30896 Filed 12–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 951208293–5293–01; I.D. 110995B]

RIN 0648–AF01

Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 5

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the measures contained in Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 5 is intended to further the Americanization of the fisheries and to implement measures to prevent overfishing and avoid overcapitalization of the domestic fleet.

DATES: Comments on the proposed rule must be received on or before January 29, 1996.

ADDRESSES: Comments on the proposed rule should be sent to: Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope, ''Comments on Amendment 5 Atlantic Mackerel, Squid, and Butterfish.''

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director at the address above and the Office of Management and Budget (OMB) (Attention: NOAA Desk Officer), Washington, D.C. 20503.

Copies of the Amendment, final environmental impact statement, regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 was developed in response to concerns regarding overcapitalization expressed by industry representatives at several meetings of the Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel, and Butterfish (SMB) Committee in the early 1990's. Increases in domestic squid landings and a stagnation in the growth of butterfish landings at well below the maximum sustainable yield (MSY) for that species moved the Council to develop this comprehensive amendment.

At its July, 1992, meeting, the Council voted to publish a notice of control date for the Atlantic mackerel, squid, and butterfish fisheries. The control date established was August 13, 1992 (57 FR 36384, August 13, 1992). This notice informed the public that the Council was considering a moratorium on vessel permits issued for these fisheries. At its July, 1994, meeting, the Council reconsidered the need for a control date for the Atlantic mackerel fishery. The data the Council reviewed indicated the catch and fishing effort had decreased in 1993 and 1994, while stock biomass remained high. In response, the Council rescinded the control date for the Atlantic mackerel fishery (59 FR 49235, September 27, 1994). Initial public scoping meetings to discuss possible management measures for SMB took place in January, 1993, at which time the vessel moratorium, mesh restrictions, and area and seasonal closures were identified as measures for consideration. A public hearing draft of Amendment 5 was adopted by the Council at its June, 1994, meeting and presented at public hearings in December, 1994. As a result of issues raised at the hearings, the Council voted in February, 1995, to issue a supplement to Amendment 5 that contained revisions to the *Loligo* minimum mesh net requirement and the qualifying criteria for the vessel moratoria. Public hearings were conducted in April, 1995, to present the revised Amendment. The Council adopted Amendment 5 on May 25, 1995, for submission to NMFS for Secretarial review.

Status of the Stocks

In 1993, the 17th Northeast Regional Stock Assessment Workshop (17th SAW) was convened to examine the status of several species, including *Illex* and *Loligo* squid and butterfish.

Results of SAW 17, as indicated in the March, 1994, plenary report, estimated MSY for *Loligo* squid to be 36,000 metric tons (mt) based on the finding that the *Loligo* has a life span of one year rather than three, as previously believed. The present MSY for *Loligo* squid is specified in the FMP as 44,000 mt, based on the assumption that *Loligo* squid has a 3-year life span. The 17th SAW advised that *Loligo* is considered to be fully utilized when based on the revised MSY of 36,000 mt.

The present MSY for *Illex* is specified in the FMP as 30,000 mt and is based on the disproven assumption that the life span of these animals is 2 years. Though the 17th SAW determined that *Illex* also has a life span of 1 year, it did not recommend revising the MSY. Instead, the 17th SAW recommended that, since *Illex* is a transboundary stock between the United States and Canada, a joint assessment should be conducted before a revised MSY could be recommended. However, the 17th SAW advised that the current MSY for *Illex* may be inappropriate and cautioned that, while the stock is under-exploited based on current MSY, the potential for recruitment overfishing may be substantial.

The exploitation rate for butterfish is unknown. However, the stock is at a low-to-medium biomass level and current catch levels are well below the MSY of 16,000 mt. The adult component of the stock has declined since 1990 and is currently well below average. It is estimated that 50 percent of the harvest of butterfish over the past several years has been discarded due to both the relatively small size of the fish and the lack of markets. The largest butterfish landings in recent years have been made as bycatch in the *Loligo* squid fishery.

At the time the Council was developing and adopting Amendment 5, the most recent stock assessment for Atlantic mackerel was that done in 1991, when the 12th SAW assessed the stock as underexploited with a high biomass. That assessment indicated that, following a period of poor year classes from 1976 through 1980, there were several years with relatively good recruitment, yielding especially strong year classes in 1982, 1987, and 1988. These cohorts contributed to a marked increase in stock biomass. Estimated spawning stock biomass was 3,010,000 mt in 1991 with an exploitation rate of 2 percent.

The recently concluded 20th SAW determined that, based on the 1994 stock assessment, the Atlantic mackerel stock continues to be under-exploited and at a high biomass level. The exploitation rate of two percent has not changed. The 20th SAW further concluded that the long-term potential catch (LTPC) projected for the Canadian and U.S. Atlantic mackerel combined was approximately 150,000 mt. This represents an increase of 16,000 mt from the previous LTPC value of 134,000 mt. The LTPC is the estimate of allowable annual catch levels that would sustain the fishery for several years.

Management Measures

NMFS is requesting comment on all measures contained in Amendment 5. However, NMFS has serious concerns about the proposed criteria for entry into the fisheries for the squids and butterfish, the exemption proposed for the sea herring fishery, the Council's proposal to constrain ABC by the LTPC value, and the use of the 50-fathom curve as a boundary for the exemption from the minimum mesh size for *Loligo* during prosecution of the summer *Illex* fishery. Because of NMFS' concerns regarding the enforceability of the 50-fathom curve as a boundary, NMFS proposes a set of latitude-longitude coordinates to achieve the Council's intent in an enforceable manner. While comment is sought on all measures contained in the proposed rule, NMFS asks the public to focus on these measures in particular, to assist in conducting a thorough and deliberative review of the amendment before final approval or disapproval by the Secretary of Commerce (Secretary).

In addition, NMFS notes that the provision contained in Amendment 5 that would require the Secretary to publish a control date for the Atlantic mackerel fishery when commercial landings reach 50 percent of allowable biological catch (ABC) is not included in this proposed rule. NMFS does not consider this provision to be a management measure to be implemented by a fishery management plan. Rather, it is viewed as a statement of Council intent; NMFS expects that the Council will recommend the publication of a notice of control date when it deems this action necessary.

The permit and reporting requirements and revision to the annual specification process, if approved, will be implemented for the 1997 fishing year. Other provisions may be effective prior to that time.

Elimination of the Potential for Joint Ventures and Directed Foreign Fishing for the Squids and Butterfish

The Council proposes to eliminate foreign participation in these fisheries. Joint ventures and total allowable levels of foreign fishing (TALFF) have not been allocated for squid or butterfish since the mid-1980's. The Council concluded that the domestic fleet has the capacity to harvest the OY from

these fisheries. However, joint venture and TALFF allocations for Atlantic mackerel may continue. If there is TALFF specified for Atlantic mackerel, there will be butterfish bycatch TALFF allocated that is equal to 0.08 percent of the mackerel TALFF, in order to reduce waste of bycatch in that fishery. The definitions of ''other allocated species'' and ''prohibited species'' at 50 CFR 611.50(b) are modified accordingly, to make squids ''prohibited species.''

MSY for Loligo Squid

The Council would revise the MSY for *Loligo* squid to 36,000 mt from 44,000 mt. The revision is based on the finding that the squid has a one-year life span. The stock is considered to be fully-exploited.

Spawning Stock Biomass (SSB) and LTPC for Atlantic Mackerel

The FMP currently specifies ABC for Atlantic mackerel as that U.S. catch that would yield an SSB of 600,000 mt. The Council would revise this threshold upward to 900,000 mt to promote recruitment. A time series based on the 1991 assessment found that the median year class size for years 1962–93, inclusive, was 1.277 billion fish. When the SSB was less than 900,000 mt, only 35 percent of the ensuing year classes were observed to be above the median. Conversely, 82 percent of the year classes were above the median recruitment level when SSB exceeded 900,000 mt.

The Council would also constrain ABC with a derived LTPC. The current LTPC specified annually by the Council would be 150,000 mt minus the projected annual Canadian catch. Therefore, at present, if this measure were approved, ABC could be no larger than 150,000 mt and is likely to be less. The Council believes that management of Atlantic mackerel should be based on long-term yield projections. However, NMFS is concerned about the fact that Atlantic mackerel stock abundance is very high currently, and that limiting ABC by LTPC may be overly constraining in the short term. The 20th SAW states that at current stock abundance amounts, Atlantic mackerel landings of 200,000 mt could be sustained for several years because of foregone yield in the fishery recently.

Seasonal Quota for Loligo Squid

This management measure would give the Regional Director authority to establish annual seasonal quotas for *Loligo* based on the recommendations of the Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) and the Council. Such quotas are intended to ensure sufficient escapement of *Loligo* squid from the offshore winter fishery to allow for catches in traditional inshore fisheries.

Moratorium on Vessel Permits for Butterfish and Squids

The Council would establish a moratorium on new vessel permits for the directed fisheries for butterfish and the squids. The Council would also establish a vessel permit category open to all vessels, which would allow a vessel to retain up to 2,500 lb (1.13 mt) of each species per trip. This incidental catch level could be adjusted annually.

Moratorium permits would be issued for *Loligo* squid and butterfish jointly and *Illex* squid separately. In the November, 1994, public hearing draft, the time horizon that served as a basis for qualifying for the moratoria permits was August 13, 1988, to August 13, 1993. Landings requirements proposed at that time were 5,000 lb (2.27 mt) in one week for *Loligo* squid or butterfish and five separate trips of at least 5,000 lb (2.27 mt) each for *Illex*. Furthermore, it was proposed that vessels would qualify for the *Illex* permit if owners had purchased refrigerated sea water equipment or an on-board freezer by May 31, 1994, and had landed five trips of at least 5,000 lb (2.27 mt) prior to the promulgation of the final regulations implementing Amendment 5. Under both moratoria, vessel replacement would be allowed if a qualifying vessel leaves the fishery involuntarily; for example, if it sinks.

Comments during the public hearings held in December, 1994, indicated that the industry believed the qualification period for the *Illex* squid permit should be extended back to August 13, 1981. This revision would allow the catch history of vessels that participated in the foreign joint venture fishery prior to 1988 to qualify them for a moratorium permit. At the February 23, 1995, SMB Committee meeting, industry representatives argued that it would not be fair to limit the extension of the qualification period to the *Illex* fishery only, convincing the Committee to recommend that the Council extend the qualification period back to 1981, for both the *Illex* and *Loligo*/butterfish moratoria permits. Furthermore, the SMB Committee believed that the *Loligo*/butterfish landing criterion was not in line with active participation in these fisheries. It recommended requiring 20,000 lb (9.07 mt) to have been landed in any 30-consecutive-day period during the qualification period. The Council accepted the SMB Committee's recommendations at its March, 1995, meeting. However, since these changes to the Public Hearing Draft regarding qualifying conditions were viewed as substantive, a Supplemental Public Hearing Draft was developed and presented at public hearings in April, 1995. After taking into account public comment, the Council adopted the revised qualifying criteria in May, 1995.

Party or Charter Boat Permit

The owner of a party or charter boat (vessel for hire) would be required to obtain an SMB party or charterboat permit. A party or charter vessel obtaining this permit could also have a commercial permit for Atlantic mackerel or a commercial moratorium permit for *Illex* squid and/or *Loligo*/butterfish if the vessel meets the qualifying criteria. However, such a vessel would be prohibited from fishing commercially when carrying passengers for a fee.

Atlantic Mackerel Permit

Although a moratorium would not exist on entry into the Atlantic mackerel fishery, an Atlantic mackerel permit would be required to harvest and sell Atlantic mackerel. Vessels receiving permits for the Atlantic mackerel fishery would be required to comply with the requirements implemented under the FMP, including recordkeeping and reporting.

Operator Permit

An operator of a vessel with a permit issued under this FMP would be required to have an operator permit issued by the Northeast Region, NMFS. The operator permits issued to operators in the fisheries for Northeast multispecies, American lobster, and Atlantic sea scallops would satisfy this requirement. The operator would be held accountable for violations of the fishing regulations and would be subject to a permit sanction. During the permit sanction period, the operator could not work in any capacity aboard a federally permitted fishing vessel.

Transfers at Sea

Only vessels issued a moratorium permit would be allowed to transfer *Loligo* squid, *Illex* squid, or butterfish at sea. This provision is intended to enhance enforcement of the incidental catch allowance for vessels without moratorium permits, which is currently specified as 2,500 lb (1.13 mt) of *Illex*, *Loligo*, or butterfish per trip.

Reporting and Recordkeeping

The Council intends to institute recordkeeping and reporting

requirements in the FMP that are identical to those required by the Summer Flounder, Northeast Multispecies, and Atlantic Sea Scallop Fishery Management Plans.

Commercial logbooks would be submitted on a monthly basis by vessel owners in order to monitor the fishery. Real-time assessment and management of the *Loligo* and *Illex* resources may be necessary due to the risk of overfishing stocks comprised of only a single cohort. The Council proposes that the Regional Director specify, during the first year of implementation, the data elements and reporting mechanism required to establish a real-time assessment and management program for the annual squid species. The Council would investigate the feasibility of such a management system in year 2 of the management program. Operators of party and charter boats with Federal permits would also be required to provide catch information on logbooks submitted monthly.

Dealers with permits issued pursuant to the FMP would submit weekly reports showing species purchased in pounds, and the name and permit number of the vessels from which the aforementioned species were purchased. Buyers that do not purchase directly from vessels would not be required to submit reports under this provision.

Minimum Mesh Size Requirement for Loligo Squid

The minimum mesh size requirement for the *Loligo* squid fishery and exemptions from that requirement would be established on a framework basis. These provisions could be changed by the Regional Director based upon the recommendation of the Council. This amendment proposes that initially, otter trawl vessels possessing one pound (0.45 kg) or more of *Loligo* squid be required to fish with nets having a minimum mesh size of 1–7/8 inch (48-mm) diamond mesh, inside stretch measure, applied throughout the net including the body and codend. A liner would be allowed to close the opening created by the rings in the rearmost portion of the codend, provided that it does not extend more than ten meshes forward from the rearmost portion of the codend. Net strengtheners, ropes, lines, or chafing gear on the outer portion of the trawl net would be required to have a mesh opening of at least 4.5 inches (115 mm), inside stretch measure. This provision would be implemented as a fishery measure that could be adjusted annually by the Regional Director, based upon a recommendation by the Council.

There are two proposed exemptions from the minimum mesh size requirement for *Loligo.* The first would exempt vessels fishing for *Illex* during the months of June, July, August, and September seaward of the 50-fathom curve. The second would exempt vessels participating in the directed fishery for sea herring, provided that 75 percent or more of their catch, by weight, is comprised of sea herring.

NMFS Office of Enforcement and the Coast Guard have expressed concern about the enforceability of an exemption area defined by a fathom curve, so NMFS proposes a set of latitude-longitude coordinates intended to follow closely the 50-fathom curve and achieve the Council's intent in an enforceable manner. These law enforcement agencies are also concerned with the feasibility of the proposed sea herring exemption because of the difficulties in ascertaining relative percentages of the catch. After receiving public comment on these exemptions, NMFS will determine how best to administer these provisions, should they be approved.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The provisions that would be implemented by Amendment 5 would prevent overcapitalization of these fisheries relative to abundance and availability of the stocks of *Loligo, Illex,* and butterfish. Amendment 5, as indicated in the initial regulatory flexibility analysis prepared by the Council, would essentially maintain the status quo, in terms of revenues for participants in the fishery, since the proposed limited entry measures would include historical participants in the fisheries. Proposed measures would not substantially affect more than 20 percent of the present participants in these fisheries and would not directly increase or decrease utilization or production of the affected species resulting in a change in expected revenues of greater than 5 percent.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Mandatory dealer reporting and annual employment data reporting have been approved by OMB under control numbers 0648–0229 and 0648–0018, respectively. Dealer reporting responses are estimated to take 2 minutes and employment data responses 6 minutes. The proposed rule also contains new requirements that have been submitted to OMB for approval. These requirements and their estimated response times are: vessel permits and vessel permit appeals at 30 minutes per response, operator permits at one hour per response, dealer permits at 5 minutes per response, and an observer notification requirement at 2 minutes per response.

The response estimates shown include the time for reviewing instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS or OMB at the **ADDRESSES** above. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 655 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq., and 16 U.S.C. 1361 et seq.

2. In § 611.50, paragraphs (b)(3) and (b)(4)(i) and (b)(4)(ii) are revised to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(b) * * *

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the Federal Register. Current TALFFs are also available from the Regional Director. The procedures for determining and adjusting the Atlantic mackerel TALFF is set forth in 50 CFR part 655.

(4) * * *

(i) The other allocated species, namely: Atlantic herring, Atlantic mackerel, butterfish (as a bycatch of Atlantic mackerel), and river herring (including alewife, blueback herring, and hickory shad); and

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail flounder, weakfish, white hake, short-finned squid, long-finned squid, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except non-allocated squids).

* * * * *

3. Part 655 is revised to read as follows:

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Subpart A—General Provisions

Sec.
655.1 Purpose and scope.
655.2 Definitions.
655.3 Relation to other laws.
655.4 Vessel permits.
655.5 Operator permit.
655.6 Dealer permit.
655.7 Recordkeeping and reporting requirements.
655.8 Vessel identification.
655.9 Prohibitions.
655.10 Facilitation of enforcement.
655.11 Penalties.

Subpart B—Management Measures

655.20 Fishing year.
655.21 Maximum optimum yields.
655.22 Procedures for determining initial amounts.
655.23 Closure of the fishery.
655.24 Time and area restrictions for directed foreign fishing.
655.25 Gear restrictions.
655.26 Minimum fish sizes. [Reserved]
655.27 Possession limits. [Reserved]
655.28 At-sea observer coverage.
655.29 Transfer-at-sea.
655.30 Experimental fishery.
Figure 1 to Part 655—Exemption line to minimum net mesh-size requirement for *Loiigo* squid.

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

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish.

(b) The regulations governing fishing for Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

§ 655.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus.*

Atlantic mackerel or *mackerel* means the species *Scomber scombrus.*

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee or *Monitoring Committee* means a committee made up of staff representatives of the Mid-Atlantic and New England Fishery Management Councils, and the Northeast Regional Office and Northeast Fisheries Science Center of NMFS. The Council Executive Director or a designee chairs the Committee.

Being rerigged means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for squid or butterfish.

Blast freezer means a freezing system in which fish are frozen by being exposed to cold air being blown over them. The freezer must be designed for use on a fishing vessel rather than designed for residential or similar use.

Charter or *party boat* means any vessel that carries passengers for hire to engage in fishing.

Council means the Mid-Atlantic Fishery Management Council.

Dealer means any person who receives squid, mackerel, or butterfish for a commercial purpose, other than solely for transport on land, from the owner or operator of a vessel issued a permit under § 655.4.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, as revised by subsequent amendments.

Fishing for commercial purposes means any fishing or fishing activity that results in the harvest of Atlantic mackerel, squid, or butterfish, one or more of which (or parts thereof) is sold, traded, or bartered.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Gross registered tonnage (GRT) means the gross tonnage specified on the U.S. Coast Guard documentation.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Joint venture harvest means U.S.-harvested Atlantic mackerel transferred to foreign vessels in the EEZ.

Land means to begin offloading fish or to offload fish at sea or on land, or to enter port with fish.

Liner means a piece of mesh rigged inside the main or outer net.

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Metric ton (mt) means 1,000 kg or 2,204.6 lb.

Operator means the master, captain, or other individual on board a fishing vessel and in charge of that vessel's operations.

Personal use means not for sale, barter, or trade.

Plate freezer means a freezing system in which fish are frozen by contact with refrigerated plates. The freezer must be designed for use on a fishing vessel rather than designed for residential or similar use.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Recirculating sea water equipment means a refrigerated sea-water system in which the seawater cooled by mechanical refrigeration is circulated through tanks that contain fish.

Recreational fishing means fishing that is not intended to, nor does result in, the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National

Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 hours local time on Sunday and ending at 2400 hours local time the following Saturday.

Squid means *Loligo pealei* and *Illex illecebrosus.*

Substantially similar harvesting capacity means the same or less GRT and vessel registered length for commercial vessels.

Total length (TL) means the distance from the tip of the snout to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

Under construction means that the keel has been laid.

Vessel registered length means the registered length specified on U.S. Coast Guard Documentation, or state registration if the state registered length is verified by a NMFS authorized official.

§ 655.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (d) of this section.

(b) Additional regulations governing domestic fishing for Northeast Multispecies, which affect this part, are found at 50 CFR part 651.

(c) Additional regulations governing domestic fishing for summer flounder, which affect this part, are found at 50 CFR part 625.

(d) Nothing in these regulations supersedes more restrictive state management measures.

§ 655.4 Vessel permits.

(a) *General*—(1) *Requirement.* Vessels, including party or charter vessels, must obtain a permit issued under this part to fish for or retain Atlantic mackerel, *Loligo*, *Illex*, or butterfish in or from the EEZ. This requirement does not pertain to recreational fishing vessels.

(2) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in or from the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing, catch and gear will remain subject to all applicable state requirements. If a requirement of this part and a management measure required by state law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Moratorium permits*—(1) *Loligo squid and butterfish.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (c)(1) of this section, if it meets any of the following criteria:

(i) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* or butterfish in any 30-consecutive-day period between August 13, 1981, and August 13, 1993; or

(ii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Loligo* or butterfish fishery during the effective period of the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iii) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity during the effective period of the moratorium.

(2) *Illex squid.* A vessel is eligible for a moratorium permit to fish for and retain *Illex* squid in excess of the incidental catch allowance specified in paragraph (c)(1) of this section, if it meets any of the following criteria:

(i) The vessel landed and sold at least 5,000 lb (2.27 mt) of *Illex* on each of five trips between August 13, 1981, and August 13, 1993; or

(ii) Recirculating sea water equipment or an on-board commercial plate or blast freezer was purchased by May 31, 1994, and installed on the vessel, and the vessel landed five trips of at least 5,000 lb (2.27 mt) each of *Illex* prior to the effective date of these regulations; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Illex* fishery during the effective period of the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iv) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same or less GRT and vessel registered length for commercial vessels during the effective period of the moratorium.

(3) *Restriction.* No one may apply for the permits specified in paragraphs (b)(1) and (2) of this section more than 12 months after the effective date of these regulations, or the event specified under paragraph (i)(1) of this section. This section does not affect annual permit renewals.

(4) *Appeal of denial of permit.* (i) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(ii) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(iii) The hearing officer shall make a recommendation to Regional Director.

(iv) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(c) *Incidental catch permit.* (1) Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid, *Illex* squid, or butterfish as an incidental catch in another directed fishery.

(2) *Adjustments to the incidental catch.* The incidental catch allowance may be revised by the Regional Director after recommendation by the Council following the procedure set forth in § 655.22. NMFS will publish a notification of any proposed adjustment in the Federal Register. The public may comment on the adjustment for 30 days after the date of publication. After consideration of public comments, NMFS may publish a notification of adjustment to the incidental catch allowance in the Federal Register.

(d) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ.

(e) *Party and charter boat permit.* Any party or charter boat may obtain a permit to fish for or retain Atlantic mackerel, squid or butterfish while carrying passengers for hire.

(f) *Vessel permit application.* (1) An application for a permit under this section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant

desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets any eligibility requirements. Dealer weighout forms, joint venture receipts, and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) *Information requirements.* In addition to applicable information required to be provided by paragraph (f)(1) of this section, an application for a permit under this section must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a valid copy of the vessel's U.S. Coast Guard documentation or, if undocumented, the state registration number and a copy of the current state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation showing the principals in the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners that have acquired more than a 25-percent interest; the name and signature of the owner or the owner's authorized representative; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel; and a copy of the charter/party boat license and number of passengers the vessel is licensed to carry (charter and party boats); and any other information required by the Regional Director to manage the fishery.

(g) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (h) of this section. Any fee paid by an insufficient bank draft shall render any permit issued on the basis thereof null and void.

(h) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit under this section within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application as described in paragraph (f) of this section. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(3) of this section; or

(iii) The applicant has failed to comply with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(i) *Expiration.* Except as provided in paragraphs (b)(1)(ii) and (b)(2)(iii) of this section, a permit expires:

(1) When the owner retires the vessel from the fishery;

(2) Upon the renewal date specified on the permit; or

(3) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a moratorium permit for the squid and butterfish fisheries if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits for an otherwise valid permit may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the federal fisheries permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(m) *Change in application information.* Any change in the information specified in paragraph (f)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* The permit must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 655.5 Operator permit.

(a) *General.* Any operator of a vessel holding a valid Federal Atlantic mackerel, *Loligo*, *Illex*, or butterfish permit under this part, or any operator of a vessel fishing for Atlantic mackerel, *Loligo*, *Illex*, or butterfish in the EEZ or in possession of Atlantic mackerel, *Loligo*, *Illex*, or butterfish in or harvested from the EEZ, must have and carry on board a valid operator's permit issued under this part. An operator permit issued pursuant to Parts 649, 650, or 651 shall satisfy the permitting requirement of this paragraph.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where

such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 655.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be deemed abandoned.

(g) *Expiration.* A Federal operator permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two recent color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 655.6 Dealer permit.

(a) *General.* All dealers must have a valid permit issued under this part in their possession.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s), owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 655.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified

under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 655.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Dealers must send by mail, to the Regional Director or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the ''Employment Data'' section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received, or postmarked if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(6) *At-sea activities.* All persons purchasing, receiving, or processing any mackerel, squid, or butterfish at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director or designee on the same frequency basis.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel issued a Federal Atlantic mackerel, *Loligo* squid, butterfish or Illex squid permit under § 655.4 must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Fishing log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. All information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Upon the request of an authorized officer, or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 655.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel owner subject to this part and over 25 ft (7.6 m) in length must affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel owner subject to this section and over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number, or the vessel's state registration number for vessels not required to be documented under title 46 of U.S.C.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be permanently affixed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in

height for vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner.* Any vessel owner subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) *Nonpermanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for Atlantic mackerel, squid, or butterfish.

§ 655.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal Atlantic mackerel, squid, or butterfish permit under § 655.4, or issued an operator permit under § 655.5, to do any of the following:

(1) Possess more than the incidental catch allowance of squid, or butterfish unless issued a moratorium permit pursuant to § 655.4(b).

(2) Use any vessel for taking, catching, harvesting, or landing of any Atlantic mackerel, squid, or butterfish, except as provided in § 655.4(a), unless the vessel has on board a valid permit issued under § 655.4.

(3) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(m).

(4) Falsify or fail to affix and maintain vessel markings as required by § 655.8.

(5) Take, retain, or land Atlantic mackerel, squid, or butterfish in excess of the trip allowance specified under § 655.23.

(6) Take, retain, or land Atlantic mackerel, squid, or butterfish after a total closure specified under § 655.23.

(7) Make any false statement, written or oral, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel, squid, or butterfish.

(8) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 655.25(a) or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 655.25(b) or the vessel is fishing under an exemption specified in § 655.25(a).

(9) Sell or transfer Atlantic mackerel, squid, or butterfish to another person for a commercial purpose, other than transport, unless that person has a dealer permit issued under § 655.6.

(10) Falsify information in order to qualify a vessel for a moratorium permit pursuant to § 655.4(b).

(11) Transfer squid, or butterfish at sea to another vessel unless that other vessel is issued a valid moratorium permit issued pursuant to § 655.4(b) or a letter of authorization issued by the Regional Director.

(12) Fail to comply with any measures implemented pursuant to § 655.22.

(13) Refuse to embark a sea sampler if requested by the Regional Director.

(14) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance an observer or sea sampler conducting his or her duties aboard a vessel.

(15) Fail to affix and maintain markings as required by § 655.8.

(16) Carry passengers for hire while fishing commercially under a permit issued pursuant to § 655.4 (b), (c), or (d).

(17) Fail to carry on board a letter of authorization if fishing in an experimental fishery pursuant to § 655.30.

(18) Employ an operator on board a vessel who has not been issued an operator permit that meets the requirements of § 655.5.

(b) It is unlawful for the owner and operator of a party or charter boat issued a permit (including a moratorium permit) pursuant to § 655.4, when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 655.22(d)

(2) Sell or transfer Atlantic mackerel, squid, or butterfish to another person for a commercial purpose.

(3) Refuse to embark a sea sampler if requested by the Regional Director.

(c) It is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ Atlantic mackerel, squid, or butterfish, except as provided in § 655.4(a), unless the person is operating a vessel issued a permit pursuant to § 655.4, and the permit is on board the vessel, and has not been surrendered, revoked, or suspended.

(2) Possess nets or netting with mesh not meeting the minimum size requirement of § 655.25 that does not meet the net stowage provisions of § 655.25, if the person possesses *Loligo* squid harvested in or from the EEZ.

(3) If subject to the permitting requirements in § 655.4, § 655.5, or § 655.6, to offload, to cause to be offloaded, sell or buy, whether on land or at sea, as an owner, operator, dealer, buyer, or receiver, without accurately and completely preparing and submitting in a timely fashion the documents required by § 655.7.

(4) Transfer squid or butterfish within the EEZ, unless the vessels participating in the transfer are issued valid moratorium permits pursuant to § 655.4(b) or valid letters of authorization pursuant to § 655.29.

(5) Purchase or otherwise receive, except for transport, Atlantic mackerel, squid, or butterfish from the owner or operator of a vessel issued a permit pursuant to § 655.4, unless in possession of a valid permit issued under § 655.6.

(6) Purchase or otherwise receive for a commercial purpose, Atlantic mackerel, squid, or butterfish caught by other than a vessel issued a permit pursuant to § 655.4, unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

(7) Make any false statements, oral or written, to an authorized officer concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic mackerel, squid, or butterfish.

(8) Fail to report to the Regional Director within 15 days any change in information contained in the permit application.

(9) Assault, resist, impede, oppose, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance to an observer or sea sampler conducting his or her duties aboard a vessel.

(10) Operate a vessel fishing for Atlantic mackerel, squid, or butterfish within the EEZ, unless issued an operator permit that meets the requirements of § 655.5.

(11) Violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All Atlantic mackerel and butterfish possessed on board a party or charter boat issued a permit under § 655.4 are deemed to have been harvested from the EEZ.

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to

§ 655.30 or to fail to keep such letter on board the vessel during the period of the experiment.

§ 655.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 655.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year is the 12-month period beginning on January 1 and ending on December 31.

§ 655.21 Maximum optimum yields.

The optimum yields (OYs) specified pursuant to § 655.22 during a fishing year may not exceed the following amounts:

(a) Atlantic mackerel: That quantity of mackerel that is less than or equal to ABC specified pursuant to § 655.22;

(b) *Loligo* squid: 36,000 mt (79,362,000 lb);

(c) *Illex* squid: 30,000 mt (66,135,000 lb); and

(d) Butterfish: 16,000 mt (35,272,000 lb).

§ 655.22 Procedures for determining initial annual amounts.

(a) *Initial annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) will meet annually to develop specifications regarding:

(1) The initial optimum yield (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids;

(2) The IOY, DAH, DAP and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and

(3) The IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for Atlantic mackerel.

(4) The Monitoring Committee will recommend these specifications to the Mackerel, Squid, and Butterfish Committee (Committee) of the Council. As a basis for establishing these specifications and restrictions, the Monitoring Committee will review available data pertaining to the following:

(i) Commercial and recreational landings;

(ii) Current estimates of fishing mortality;

(iii) Stock status;

(iv) The most recent estimates of recruitment;

(v) Virtual population analysis results;

(vi) Levels of noncompliance by harvesters or individual states;

(vii) Impact of size/mesh regulations;

(viii) The results of a survey of domestic processors and joint venture operators of estimated Atlantic mackerel processing capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648–0114);

(ix) The results of a survey of fishermen's trade associations of estimated Atlantic mackerel harvesting capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648–0114);

(x) Any other relevant information.

(b) *Guidelines.* The specifications determined pursuant to paragraph (a) by the Monitoring Committee will be consistent with the following guidelines:

(1) *Squid.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. ABC for any fishing year is either the maximum OY specified in § 655.21, or a lower amount if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Atlantic mackerel.* (i) Atlantic mackerel ABC is derived using the following terms: C = Estimated mackerel catch in Canadian waters for the upcoming fishing year; S = Mackerel spawning-stock size at the beginning of the upcoming fishing year for which catch estimates and quotas are being specified; and LTPC = Long term potential catch as estimated by the Northeast Fisheries Science Center (NEFSC).

(ii) ABC for the upcoming fishing year must be set at a level to maintain a minimum value for S of 900,000 mt (1,984,050,000 lb) and cannot exceed LTPC minus C.

(iii) IOY is less than or equal to ABC and represents a modification of ABC, based on social and economic factors.

(iv) IOY is composed of DAH and TALFF. DAH, DAP and JVP are projected by reviewing data from sources specified in this paragraph (a) and other relevant data including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on such criteria as contained in the Magnuson Act, specifically section 201(e), and the application of the following economic factors:

(A) Total world export potential by mackerel producing countries;

(B) Total world import demand by mackerel consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased/decreased revenues to the U.S. from foreign fees;

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(F) Increased/decreased revenues to U.S. processors and exporters;

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest;

(H) Increases/decreases in U.S. processing productivity; and

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(v) The Council may also recommend that certain ratios of TALFF to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(3) *Butterfish.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. If this review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Council will recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC is to be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF which is equal to 0.08 percent of the allocated portion of the Atlantic mackerel TALFF.

(c) *Adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the Council, during the fishing year by publishing a notification in the Federal Register stating the reasons for such an action with a 30-day comment period.

(d) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Committee the following

measures it determines are necessary to assure that the specifications are not exceeded:

(1) Commercial quotas;

(2) The amount of *Loligo* squid, *Illex* squid, and butterfish which may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 655.4(c);

(3) Commercial minimum fish sizes;

(4) Commercial trip limits;

(5) Commercial seasonal quotas;

(6) Minimum mesh sizes;

(7) Commercial gear restrictions;

(8) Recreational harvest limit;

(9) Recreational minimum fish size;

(10) Recreational possession limits;

(11) Recreational season.

(e) *Annual fishing measures.* (1) The Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the Committee shall make its recommendations to the Council with respect to the specifications and any other measures necessary to assure that the specifications are not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental, economic, and social impacts of the proposed action. The Regional Director will review these recommendations, and on or about November 1 of each year, will publish a notification in the Federal Register of proposed specifications and any other measures necessary to assure that the specifications are not exceeded. If the specifications differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The Federal Register notification of proposed specifications will provide for a 30-day public comment period.

(2) The Council's recommendations will be available in aggregate form for inspection at the office of the Regional Director during the public comment period.

(3) On or about December 15 of each year, the Secretary will make a final determination concerning the specifications for each species and the other measures contained in the notification of proposed specifications. After the Secretary considers all relevant data and any public comments, a notification of final specifications and response to public comments will be published in the Federal Register. If the final amounts differ from those recommended by the Council, the reason(s) for the difference(s) must clearly be stated and the revised specifications must be consistent with the guidelines set forth in paragraph (b) of this section.

§ 655.23 Closure of the fishery.

(a) *General.* The Secretary shall close the directed Atlantic mackerel, *Illex* squid, *Loligo* squid, or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, if such closure is necessary to prevent the DAH from being exceeded. The closure will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Secretary shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* The Secretary will take the following actions if it is determined that a closure is necessary:

(1) Notify, in advance, the Executive Directors of the Mid- Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under §§ 655.4, 655.5 and 655.6 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notification of the closure to recreational participants in the fishery; and

(4) Publish a notification of closure in the Federal Register.

(c) *Incidental catches.* During a period of closure of the directed fishery, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board for vessels with *Loligo*/butterfish moratorium permits, *Illex* moratorium permits or mackerel commercial permits. During a period of closure of the directed fishery, the trip limit for the species for which the fishery is closed is either 10 percent by weight of the total amount of fish on board, or the allowed level of incidental catch specified in § 655.4(c)(1), whichever is less.

§ 655.24 0Time and area restrictions for directed foreign fishing.

Foreign fishing is regulated under the provisions specified in § 611.50(b)(2).

§ 655.25 Gear restrictions.

(a) *Mesh restriction and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net. There are two exemptions to this requirement:

(1) During the months of June, July, August, and September, otter trawl vessels fishing for *Illex* seaward of the following coordinates (see Figure 1 to part 655):

Point	Latitude	Longitude
.		
Point M1	43°58.0′ N.	67°22.0′ W.
Point M2	43°50.0′ N.	68°35.0′ W.
Point M3	43°30.0′ N.	69°40.0′ W.
Point M4	43°20.0′ N.	70°00.0′ W.
Point M5	42°45.0′ N.	70°10.0′ W.
Point M6	42°13.0′ N.	69°55.0′ W.
Point M7	41°00.0′ N.	69°00.0′ W.
Point M8	41°45.0′ N.	68°15.0′ W.
Point M9	42°10.0′ N.	67°10.0′ W.
Point M10	41°18.6′ N.	66°24.8′ W.
Point M11	40°55.5′ N.	66°38.0′ W.
Point M12	40°45.5′ N.	68°00.0′ W.
Point M13	40°37.0′ N.	68°00.0′ W.
Point M14	40°30.0′ N.	69°00.0′ W.
Point M15	40°22.7′ N.	69°00.0′ W.
Point M16	40°18.7′ N.	69°40.0′ W.
Point M17	40°21.0′ N.	71°03.0′ W.
Point M18	39°41.0′ N.	72°32.0′ W.
Point M19	38°47.0′ N.	73°11.0′ W.
Point M20	38°04.0′ N.	74°06.0′ W.
Point M21	37°08.0′ N.	74°46.0′ W.
Point M22	36°00.0′ N.	74°52.0′ W.
Point M23	35°45.0′ N.	74°53.0′ W.
Point M24	35°28.0′ N.	74°52.0′ W.

Vessels fishing under this exemption may not have available for immediate use, as described in paragraph (b) of this section, any net with mesh size less than 1⅞ inches (48 mm) diamond mesh when the vessel is landward of the specified coordinates.

(2) Vessels participating in the directed fishery for sea herring, provided that their catch comprises 75 percent or more by weight of sea herring.

(b) Net stowage requirements. Otter trawl vessels possessing *Loligo* squid that are subject to the minimum mesh size may not have ''available for immediate use'' any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use, is considered not to be ''available for immediate use'':

(1) A net stowed below deck, provided:

(i) it is located below the main working deck from which the net is deployed and retrieved;

(ii) the towing wires, including the leg wires, are detached from the net; and

(iii) it is fan-folded (flaked) and bound around its circumference; or

(2) A net stowed and lashed down on deck, provided:

(i) it is fan-folded (flaked) and bound around its circumference;

(ii) it is securely fastened to the deck or rail of the vessel; and

(iii) the towing wires, including the leg wires, are detached from the net; or

(3) A net that is on a reel and is covered and secured, provided:

(i) the entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) the towing wires, including the leg wires, are detached from the net; and

(iii) the codend is removed from the net and stored below deck; or

(4) Nets that are secured in a manner authorized in writing by the Regional Director and published in the Federal Register.

(c) *Mesh obstruction or constriction.* Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) mesh (inside stretch measure); net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than effective 1⅞ inches (48 mm) mesh (inside stretch measure). ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. Net strengtheners (covers) may not have a mesh less than effective 4.5-inch (11.43-cm) mesh (inside stretch measure).

§ 655.26 Minimum fish sizes. [Reserved]

§ 655.27 Possession limits. [Reserved]

§ 655.28 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a permit issued under § 655.4.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of Atlantic mackerel, *Loligo* squid, *Illex* squid, or butterfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 655.29 Transfer-at-sea.

Only vessels issued a moratorium permit under § 655.4(b) may transfer *Loligo*, *Illex*, or butterfish at sea. Unless authorized in writing by the Regional Director, vessels issued an incidental catch permit under 655.4(c) are prohibited from transferring or attempting to transfer *Illex*, *Loligo*, or butterfish from one vessel to another vessel.

§ 655.30 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the Atlantic mackerel, squid, or butterfish resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic mackerel, squid, or butterfish resource and fishery; or

(2) Cause any quota to be exceeded; or

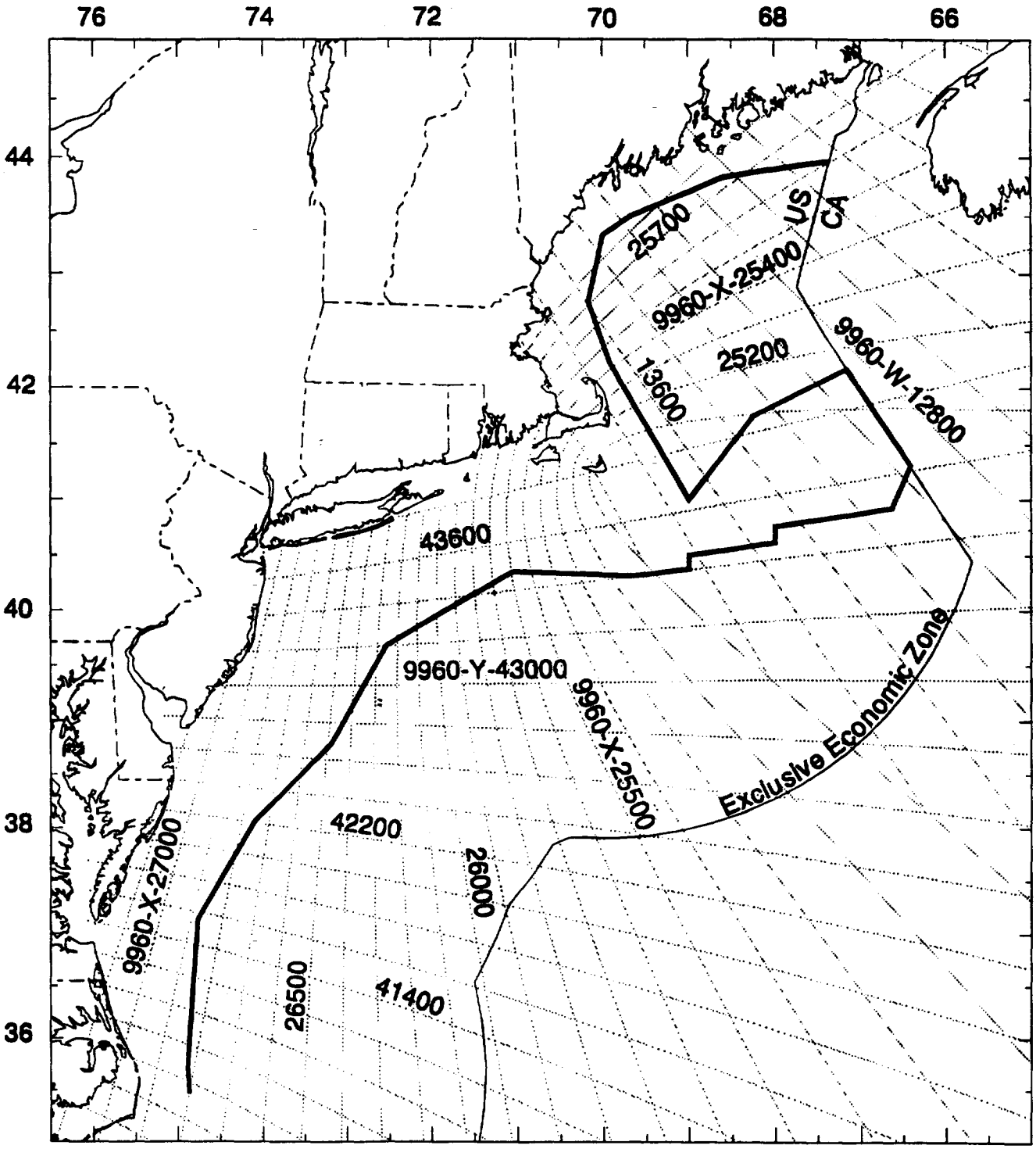
(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

4. Figure 1 to part 655 is added to read as follows:

BILLING CODE 3510–22–P

Figure 1 to Part 655—Exemption line to minimum net mesh-size requirement for Loligo squid



[FR Doc. 95-30821 Filed 12-15-95; 11:27 am]

BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 60, No. 244

Wednesday, December 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments of this notice must be received by February 23, 1996, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, Beltsville Agricultural Research Center—West, ARS, USDA, 10300 Baltimore Avenue, Beltsville, MD 20705–2330, (301) 504–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Beneficial Organisms: Foreign/Overseas Source (AD–941); Quarantine Facility (AD–942); and Non-Quarantine (AD–943).

OMB Number: 0518–0013.

Expiration Date of Approval: May 31, 1996.

Type of Request: Extension of currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–941), release from quarantine (AD–942), and shipment and/or field release/recolonization (AD–942 and AD–943) of foreign/introduced beneficial organisms (biological control agents and pollinators). The information collected is entered into the USDA ''Releases of Beneficial Organisms in the United States and Territories'' (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. Efforts are underway to replace the paper forms with computerized information collection, and when completed, the forms would be used by those units for which computerized input is not possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Non-profit institutions, universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 100.

Estimated Number of Responses per Respondent: An average of 3 (range 1–60).

Estimated Total Annual Burden on Respondents: 25 hours.

Copies of the 3 forms used in this information collection can be obtained from Jack R. Coulson, ARS Biological Control Documentation Center, at (301) 504–6350.

COMMENTS: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to:

Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, ARS, USDA, Beltsville Agricultural Research Center—West, 10300 Baltimore Avenue, Beltsville, MD 20705–2350.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Beltsville, MD, December 1, 1995.

Richard S. Soper,

Assistant Administrator, Office of International Research Programs, Agricultural Research Service, Department of Agriculture.

[FR Doc. 95–30836 Filed 12–19–95; 8:45 am]

BILLING CODE 3410–03–M

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.

Date: February 14–15, 1996.

Time: 8:30 a.m.–5:00 p.m., February 14, 1996; 8:30 a.m.–5:00 p.m., February 15, 1996.

Place: USDA, South Building, Room 3109, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advance the development of the National Genetic Resources Program.

Contact Person: Henry L. Shands, Director, National Genetic Resources Program, Building 005, Room 115, BARC-West, Beltsville, Maryland 20705. Telephone: 301–504–5059.

Done at Beltsville, Maryland, this 11 day of December 1995.

Henry L. Shands,

Director, National Genetic Resources Program.

[FR Doc. 95–30835 Filed 12–19–95; 8:45 am]

BILLING CODE 3410–03–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's Scientific and Policy Advisory Committee; Notice of Closed Meetings

December 7, 1995.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meetings:

Name: Scientific and Policy Advisory Committee (SPAC).

Dates: January 3 & 4, 1996; February 14, 15, & 16, 1996.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, NW., Room 4930, Washington, DC.

Type of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Scientific and Policy Advisory Committee, Room 5844, Washington, DC 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meetings: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. Both of the meetings will be held in Executive Session.

Reason for Closing: The SPAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority To Close Meetings: The closing of the meetings is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated December 7, 1995, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination To Close Meetings of the Scientific and Policy Advisory Committee

December 7, 1995.

The Scientific and Policy Advisory Committee (SPAC) will hold meetings in Washington, DC on January 3 and 4 as well as February 14, 15 and 16. The Arms Control and Disarmament Act, as amended (22 U.S.C. sec. 2566) provides for the SPAC to advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meetings will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. sec. 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, the meetings should be closed to the public.

John D. Holum.

[FR Doc. 95–30700 Filed 12–19–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 791]

Grant of Authority for Subzone Status; Mobil Corporation (Oil Refinery), St. Bernard/Jefferson/St. Charles Parishes, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the Port of New Orleans, grantee of Foreign-Trade Zone 2, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Corporation at sites in St. Bernard/Jefferson/St. Charles Parishes, Louisiana (New Orleans area), was filed by the Board on June 8, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 30–95, 60 FR 31703, 6–16–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 2H) at the Mobil Corporation oil refinery complex, in St. Bernard/Jefferson/St. Charles Parishes, Louisiana, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050 and #2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30952 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 792]

Grant of Authority for Subzone Status; Bayway Refining Company (Oil Refinery), Linden, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, for authority to establish special-purpose subzone status at the oil refinery complex of Bayway Refining Company in Linden, New Jersey, was filed by the Board on June 19, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 32–95, 60 FR 33187, 6–27–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 49E) at the Bayway Refining Company oil refinery complex, in Linden, New Jersey, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050 and #2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30953 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 790]

Grant of Authority for Subzone Status; Mobil Corporation (Oil Refinery), Gloucester County, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Jersey Port Corporation, grantee of Foreign-Trade Zone 142, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Corporation at sites in Gloucester County, New Jersey, was filed by the Board on May 24, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 27–95, 60 FR 29551, 6–5–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 142A) at the Mobil Corporation oil refinery complex, in Gloucester County, New Jersey, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 95–30951 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 793]

Grant of Authority for Subzone Status; Crown Central Petroleum Corporation (Oil Refinery) Harris County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C.

81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the oil refinery complex of Crown Central Petroleum Corporation at sites in Harris County, Texas, was filed by the Board on June 23, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 34–95, 60 FR 34511, 7–3–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84N) at the Crown Central Petroleum Corporation oil refinery complex, in Harris County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000 - # 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30954 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–037]

Dry Cleaning Machinery From Germany, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of Antidumping Finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on dry cleaning machinery from Germany because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Art DuBois or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On November 1, 1995, the Department published in the Federal Register (55541) its notice of intent to revoke the antidumping finding on dry cleaning machinery from Germany (November 8, 1972). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under 353.2(k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on dry cleaning machinery from Germany is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of dry cleaning machinery from Germany. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8456.10.00.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of dry cleaning machinery from Germany entered, or withdrawn from warehouse, for consumption on or after November 1. Entries made during the period November 1, 1994, through October 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 1, 1995 without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: December 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30958 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–821–805]

Notice of Amended Antidumping Duty Order: Pure Magnesium From the Russian Federation; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 22, 1995, the Department of Commerce (''the

Department'') made its final determination that pure magnesium from the Russian Federation was being sold at less than fair value (see Pure Magnesium and Alloy Magnesium from the Russian Federation (60 FR 16432, March 30, 1995)). On May 12, 1995, the Department published the antidumping duty order on pure magnesium from the Russian Federation (60 FR 25691). A ministerial error identified by a respondent, Interlink, was not corrected by the Department prior to the time the parties filed suit with the Court of International Trade (CIT). On December 6, 1995, the CIT granted the Department's request for leave to correct the ministerial error. This notice provides the results of that correction.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1769.

Scope of Orders

The product covered by this order is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order is alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these orders are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Case History

On March 22, 1995, the Department of Commerce (''the Department'') made its final determination that pure magnesium from the Russian Federation was being sold at less than fair value (see Pure Magnesium and Alloy Magnesium from the Russian Federation (60 FR 16432, March 30, 1995)). On May 12, 1995, the Department published the antidumping duty order on pure magnesium from the Russian Federation (60 FR 25691).

On May 11, 1995, respondent exporter, Interlink, alleged that a ministerial error had been made in that the Department incorrectly assigned a margin for its sales of subject merchandise supplied by Russian producer, Solikamsk Magnesium Works (SMW). Interlink requested that the Department clarify the antidumping duty order to show that Interlink is excluded with regard to subject merchandise supplied by SMW. The Department found the allegation constituted a ministerial error (see memo from The Magnesium Team to Barbara Stafford dated October 19, 1995). However, because the petitioner filed suit with the CIT before we could correct this error, we were unable to correct this error and publish the amended final determination and amended antidumping duty order. Subsequently, the CIT granted the Department leave to correct this ministerial error.

Amendment of Final Determination and Antidumping Duty Order

The Department has corrected the ministerial error in Interlink's margin calculation as follows: where the foreign market value (FMV) had been incorrectly based on an average of the factors of production for both SMW and the other Russian producer Avisma Titanium-Magnesium Works, the FMV now is based solely on SMW's factors of production. As a result the Department is amending its final determination and antidumping duty order of pure magnesium from the Russian Federation. The ad valorem weighted-average dumping margin for Interlink is as follows:

Interlink/Avisma—0.00
Interlink/SMW—0.00
Interlink/Other—100.25

This notice constitutes the amended antidumping duty order with respect to pure magnesium from the Russian Federation. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order are published in accordance with section 736(a) of the Act and 19 CFR 353.28(c).

Dated: December 14, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–30957 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A 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 Act 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. An original and five (5) copies 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 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 89–6A016.''

Geothermal Energy Association's original Certificate was issued on 02/05/90. It was subsequently amended on 11/07/90, 04/17/91, 09/11/91, 10/25/93, and 09/26/94. A summary of the original Certificate was published in the Federal Register on 02/09/90 [55 FR 4647]. A summary of the application for amendment follows.

Summary of the Application:

Applicant: Geothermal Energy Association, 2001 Second St., Suite 5, Davis, CA 95616.

Application No.: 89–6A016.

Contact: Arthur John Armstrong, Attorney, (703) 356–3100.

Date Deemed Submitted: Dec. 7, 1995.

Proposed Amendment: The Geothermal Energy Association seeks to amend its Certificate to add the following additional entities as ''Members'' within the meaning of § 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Ormat International, Inc., Sparks, Nevada (Controlling entity: Ormat Technologies, Inc.); Resource Group, Palm Desert, CA; and Ingram Cactus Co., Houston, TX (Controlling entity: Ingram Industries, Inc.). The amendment would delete Foster Valve Corporation and Ormat, Inc.

Dated: December 11, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–30950 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DR–P

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final dumping determination made by the Secretaria de Comercio y Fomento Industrial, respecting Seamless Commercial Steel Tubes from the United States of America. The Binantional Panel Review is terminated. (Secretariat File No. MEX–95–1904–01).

SUMMARY: On November 10, 1995, Gulf States Tube Division field a Request for Panel review in the above referenced matter with the Mexican Section of the NAFTA Secretariat. On December 6, 1995, Gulf States filed a Notice of Motion requesting termination of this panel review. No other interested persons filed a request for Panel Review of this final determination. As of December 6, 1995, no Complaint nor Notice of Appearance had been filed by any interested person. Therefore, pursuant to subrules 71(2) and 78(a) of the NAFTA Article 1904 Panel Rules 159 FR 8686, February 23, 1994) this Notice of Completion of Panel Review was effective on March 17, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

Dated: December 13, 1995

James R. Holbein,

United States Secretary, NAFTA Binational Secretariat.

[FR Doc. 95–30949 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License; Advanced Ceramics Research

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,772,524, titled, ''Fibrous Monolithic Ceramic and Method For Production'' to Advanced Ceramics Research, having a place of business in Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 4,772,524 is a process of making fibrous monolithic ceramic product of high density.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise

from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 53, No. 209 (October 28, 1988). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: December 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–30945 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–13–M

Prospective Grant of Exclusive Patent License; Pasadena Scientific Industries

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,389,523, titled, ''Liposome Immunoanalysis By Flow Injection Assay'' to Pasadena Scientific Industries, having a place of business in Hanover, Maryland.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 5,389,523 is a method of immunoanalysis which combines immobilized immunochemistry with the technique of flow injection analysis, and employs microscopic spherical structures called liposomes, or lipid vesicles, as carriers of detectable reagents.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 57, No. 226 (November 23, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: December 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–30944 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Proposed Information Collection Available for Public Comment

ACTION: Notice; correction.

SUMMARY: In FR Doc. 95–29448 concerning a notice of proposed information collection available for public comment on Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173, appearing on pages 62080 and 62081 in the issue of Monday, December 4, 1995, change ''Annual Burden Hours:'' ''423,300 hours'' to read ''255,000 hours'' and the ''Average Burden Per Response:'' ''.83 hours'' to read ''.5 hours.'' All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Office of the Under Secretary of Defense for Personnel and Readiness, ATTN: Reports Clearance Officer, Room 3C980, 4000 Defense Pentagon, Washington, DC 20301–4000, telephone number (703) 614–8989.

Dated: December 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30914 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations about environmental restoration at military installations that are being closed or realigned. At the meeting, the DERTF will address issues related to generic remedies, future land use, and the environmental aspects of the base realignment and closure (BRAC) program. The DERTF also will be briefed on the cleanup program at the Orlando Naval Training Center. The business meeting and hearing will be open to the public. Public witnesses who wish to speak before the DERTF should contract Shah A. Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public comment as stated below. Written statements must be received by the close of business, January 5, 1995, at the Office of the Deputy Under Secretary of Defense (Environmental Security).

DATES: January 23, 1996, 9:15 a.m.–7 p.m.; January 24, 1996, 9 a.m.–2:45 p.m.; January 25, 1996, 8:15 a.m.–11 a.m.

PUBLIC COMMENT PERIODS ARE: January 23, 1996, 6 p.m.–7 p.m.; January 25, 1996, 8:30 p.m.–9:30 p.m.

ADDRESSES: The Westgate Lakes Hotel, 10,000 Turkey Lake Road, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Mr. Shah A. Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Room 3C767, Washington, DC 20301–3400; telephone (703) 697–7475.

Dated: December 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30852 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Office of Secretary

Meeting of the Military Health Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military

Health Care Advisory Committee. This is the third meeting of the Committee. The purpose of the meeting is to advise the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense (Personnel and Readiness), the Assistant Secretary of Defense (Health Affairs), and the Military Departments with respect to problems and opportunities and potential solutions and strategies for the military health care system. Meeting sessions will be held daily and will be open to the public.

DATES: Janaury 11–12, 1996.

ADDRESSES: ACC (Air Combat Command) Conference Center, Langely Air Force Base, 190 Dodd Boulevard, 2nd Floor, (corner of Thompson Street and Dodd Boulevard), Hampton, VA, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sir Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 9:00 a.m. and 12:15pm, Thursday, January 11, and between 8:30 a.m. and 12 Noon on Friday, January 12, 1996. Contact Lt Col Jody Williams at (804) 764–7811 or 7812 at least 24 hours prior to the meeting to gain access to the base.

Dated: December 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30853 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Availability

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the Revised Draft Environmental Impact Statement (DEIS) on the construction and operation of the proposed chemical agent demilitarization facility at the Umatilla Depot Activity, Oregon. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at the Umatilla Depot Activity. The revised DEIS examines the potential impacts of on-site incineration, alternative sites within Umatilla Depot Activity and the ''no action'' alternative. The ''no action'' alternative is considered to be a deferral of demilitarization with continued storage of agents and munitions at the Umatilla Depot Activity.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. on February 6, 1989, the Department of the Army published a Notice of Intent (54 FR 5646) which announced that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Umatilla chemical munitions disposal facility. The Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Umatilla Depot Activity. A Notice of Availability was published on October 23, 1991 (56 FR 54841) which provided notice that the Draft EIS was available for public comment. In late 1991, preparation of draft and final EIS's was halted pending the outcome of a National Research Council (NRC) study of alternative technologies for the destruction of chemical agents and munitions and the Army's review of that study. The alternative technology studies by both the NRC and the Army have been completed and preparation of EIS's has been restarted. Comments from the initial DEIS were included in this revised draft document.

Comments on this revised DEIS will be considered in the Final EIS and should be provided in writing by February 16, 1996, to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–ME, Aberdeen Proving Ground, Maryland 21010–5401. Copies may be obtained by writing to the above address.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for the revised DEIS in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Above address, or Ms. Suzanne Fournier at (410) 671–1093.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 95–30820 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee (Policy Committee)

AGENCY: Headquarters, I Corps and Fort Lewis, Fort Lewis, WA.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.

DATE OF MEETING: January 23, 1996.

PLACE: Officers' Club, Fort Lewis, Washington.

TIME: 12:30 p.m.

PROPOSED AGENDA: After action review of Cascade Sage 95 and Cultural and Natural Resources Management Plan update. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (206) 967–0793.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30841 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee (Technical Committee)

AGENCY: Headquarters, I Corps and Fort Lewis, Fort Lewis, WA.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

DATE OF MEETING: January 11, 1996.

PLACE: Yakima Training Center, Building 266, Yakima, WA.

TIME: 1:30 p.m.

PROPOSED AGENDA: After action review of Cascade Sage 95 and Cultural and Natural Resources Management Plan review. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (206) 967–0793.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30845 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Extension of Comment Period on the Proposal To Change Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) Governing Carrier's Entitlement to Detention Charges)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice to extend comment period.

SUMMARY: This notice extends the deadline to January 31, 1996 for comments on the Military Traffic Management Command (MTMC) Proposal to Change Items 85 and 90 in the MTMC Freight Traffic Rules Publication 1A (MFTRP 1A) Governing Motor Carrier Entitlement to Detention Charges. Formerly the deadline for comments was December 26, 1995 as published on November 24, 1995 (FR, Vol. 60, No. 226, page 58052).

FOR FURTHER INFORMATION CONTACT: Mr. Leon N. Patton Jr., or Mr. John Alexander, (703) 681–6871, Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30844 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Extension of Comment Period on the Transloading of Arms, Ammunition, and Explosives

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice to extend comment period.

SUMMARY: This notice extends the deadline to January 31, 1996 to comments on the Military Traffic Management Command (MTMC) Proposal to Change Item 48 in the MTMC Freight Traffic Rules Publication 1A Governing Transloading of Shipments of Divisions 1.1, 1.2, and 1.3 Ammunition and Explosives. Formerly the deadline for comments was December 26, 1995, as published in the notice section on November 24, 1995 Federal Register, Vol. 60, No. 226, page number 58054).

FOR FURTHER INFORMATION CONTACT: Mr. David Foreman, (703) 681–6293, Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30842 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for the Development of Facilities in San Diego/Coronado, CA To Support the Homeporting of One Nimitz-Class Aircraft Carrier

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement the preferred alternative presented in the Final Environmental Impact Statement (FEIS) to comply with the 1993 Base Realignment and Closure (BRAC) directive from Congress to close Naval Air Station Alameda and relocate ships currently homeported there to fleet concentrations in San Diego and in the Pacific Northwest. Affected ships include two Nimitz-class aircraft carriers (CVNs), one of which will be realigned to the San Diego area and is the subject of this decision.

A Notice of Intent was published in the Federal Register in July 1993, indicating that the Navy would prepare a Draft Environmental Impact Statement (DEIS) for the Development of Facilities in San Diego/Coronado to Support the Homeporting of One Nimitz-Class Aircraft Carrier. A scoping meeting was held in August 1993, in Coronado, California. In May 1995, the DEIS was distributed to federal, state and local agencies, elected officers, special interest groups, and interested individuals. A public hearing was held on June 7, 1995 in Coronado. Oral and written comments and Navy responses were incorporated into the FEIS which was distributed to the public for a review period that ended on December 8, 1995.

The proposed action includes six separate construction projects for facilities and infrastructure necessary to support one CVN and preserve the existing capacity to accommodate one transient CVN at Naval Air Station North Island (NASNI). Homeporting a CVN will require: (1) Dredging of the carrier berths and turning basin, and the San Diego Bay channel (consisting of the inner channel and the outer channel); and (2) constructing a bay fill area, a carrier wharf, propulsion plant maintenance facilities, and support utilities during the next five years.

The carrier berths and turning basin will be dredged to a depth of −50 feet below Mean Lower Low Water (MLLW), the inner channel will be dredged to −47 feet MLLW, and the outer channel will be dredged to −55 feet MLLW. The outer channel extends south from Point Loma for 2.2 miles until the natural water depth reaches −55 feet MLLW. A total of approximately 9 million cubic yards (CY) of sediments will be dredged and disposed of at several locations. Of that amount, 70,000 CY adjacent to the existing quaywall has been found unsuitable for ocean disposal and will be used as backfill in the bay fill area. In addition, approximately 40,000 CY of sediment dredged from the rock dike foundation and 150,000 CY of sediment dredged from an eelgrass mitigation site will also be used as backfill in the bay fill area. Bioaccumulation studies indicated that approximately 932,000 CY of dredged material located in the berthing area are suitable for ocean disposal and will be disposed of at the U.S. Environmental protection Agency approved Ocean Disposal Site (LA–5), located approximately 5 miles southwest of Point Loma. The remaining dredged material of approximately 7.86 million CY are suitable for beach nourishment. This material will be deposited nearshore in water depth ranging between −20 and −30 feet MLLW at four severely eroded beaches in San Diego County. These beaches include: (a) Imperial Beach which will receive approximately 1.7 million CY, (b) Del Mar and (c) Oceanside, which will receive approximately 2.46 million CY each, and (d) Mission Beach, which will receive approximately 1.24 million CY of the dredged material. The exact disposal quantities and locations are subject to approval and permitting by the U.S. Army Corps of Engineers (COE).

The San Diego Association of Governments (SANDAG) is attempting to obtain funding to supplement available Navy military construction funding in order to place dredged material directly onto eroded beaches. In the event that federal, state, or local funding becomes available in time to meet dredging schedules, dredge material determined suitable for beach nourishment by the COE would be placed directly onshore at five beach sites located in San Diego County. These five beaches were analyzed during the EIS process and have been determined to be suitable for onshore beach nourishment. These beaches are not suitable for nearshore placement of dredged material because of sensitive

marine resources. Under this contingency, the total of beach quality materials would be deposited at nine sites, both nearshore and on the beach. The exact disposal quantities and locations are subject to approval and permitting by the COE.

A 13.4 acre bay fill area will be constructed to provide adequate land space for carrier maintenance and support functions that need access, laydown, or staging room. This area will also accommodate a boatyard, a cleared security area, requisite fire lanes, and sufficient space for pier crane operations including the movement of towed aircraft to and from the carrier. A carrier wharf adjacent to the bay fill area will be constructed to provide the necessary berthing spaces and onshore support facilities, including electrical power, steam, water, sewage, and oily waste offloading. A 14 acre near-shore site for eelgrass mitigation will be dredged between the low tide line and −5 feet MLLW along the western shore at NASNI.

Three propulsion plant maintenance facilities will be constructed to provide depot-level maintenance of CVN propulsion plant systems and components in the San Diego area. These facilities are: (1) The Controlled Industrial Facility which will be used for the inspection, modification and repair of radiologically controlled equipment and components associated with naval nuclear propulsion plants; (2) The Ship Maintenance Facility which will house the machine tools, industrial processes, and work functions necessary to perform nonradiological depot-level maintenance on CVN propulsion plants; and (3) The Maintenance Support Facility which will house the central area for receiving, inspecting, shipping, and storing materials, and for personnel support spaces. Construction of these three facilities will involve demolition of two historic seaplane hangars.

Impacts to water quality, air quality, benthic organisms, marine and natural resources will briefly occur during dredging and disposal activities and construction of the shore facilities. These impacts, however, are not considered significant within the context of the project location and with implementation of specific mitigation measures described herein.

While the environmental analysis conducted during the EIS process concluded that there would be no significant impacts associated with this project, several topics of concern were identified, including traffic congestion, dredging, and dredge material disposal.

In accordance with the Clean Air Act and General Conformity Rule requirements, an air quality review has been conducted for the proposed projects. it has been determined that the proposed action is in compliance with 40 CFR Part 63 (Determining conformity of General Federal Actions to State or Federal Implementation Plans) and satisfies the requirement of Section 176(c) of the Clean Air Act (42 USC 7506). Accordingly, the proposed action conforms to the state implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of those standards.

Section 404 of the Federal Water Pollution Control Act (FWPCA) requires authorization from the COE for the discharge of dredged material into the waters of the United States. Section 404 regulations prohibit the use of any disposal site in open water when its use would result in adverse effects on water quality, shellfish beds, fisheries and wildlife, or recreational areas. The Navy has determined that the proposed dredging would not have significant impacts and has applied for a Section 404 permit for this project.

Section 401 of the FWPCA requires that any party proposing to engage in an activity which may affect water quality must obtain state water quality certification. Certification will not be granted unless it has been determined that the proposed activity will not violate state water quality standards. The Navy has applied for a Section 401 permit from the California Regional Water Quality Control Board.

In accordance with the Coastal Zone Management Act, the Navy has requested and received concurrence with its determination of coastal zone consistency for the CVN homeporting project from the California Coastal Commission.

Pursuant to Executive Order 12898 on Environmental Justice, potential environmental and economic impacts on minority and low-income persons and communities were assessed. Any impacts caused by the CVN homeporting project will be experienced equally by all groups within the overall regional population. Because no long-term negative environmental impacts are expected from the proposed action, no particular minority or low income segment of the population would be disproportionately affected. There is not anticipated to be any likelihood for minority or low income individuals to be subjected to adverse environmental or health risks.

In accordance with the National Historic Preservation Act, the Navy has signed a Memorandum of Agreement which stipulates the mitigation required for the demolition of two seaplane hangars.

The Navy has also concluded that there are no historic properties at the dredge or disposal sites.

Comments Received on the FEIS

Ten comment letters were received following publication of the FEIS. Several of these letters contained substantive comments which are addressed below. Others reiterated comments which were previously submitted and which have been addressed in the FEIS, or which were beyond the scope of this EIS.

The U.S. Environmental Protection Agency responded supporting the project, concluding that the Navy had been responsive to the Agency's concerns.

The U.S. Fish and Wildlife Service (FWS) responded concurring with the analysis contained in the EIS and with the mitigation plan established for the burrowing owl.

The City of Coronado expressed support for homeporting the CVN addressed in this project, however the City is concerned about the impact on Coronado of all Navy projects in the area. The City requests the Navy agree to take action on several measures the City believes would ease the impacts of Navy-related projects in the area. The Navy has met with City representatives and has found significant areas of cooperation and agreement, including the following specific actions:

- Use of an existing parking lot on NAS North Island property for use by Navy members and government employees whose automobiles do not meet criteria for general access to the base. This lot is intended to reduce parking congestion on city streets near the base. The lot's only restriction is to limit vehicles to 30 days of continuous use. The Navy will investigate the legal impacts of eliminating even the 30 day restriction.
- The Navy is willing to seek funding for a new entrance to NAS North Island, at the end of Third Street in Coronado, in conjunction with construction of a new commissary planned for 1997.
- Barging equipment and material rather than trucking it through Coronado is a major consideration for the construction contracts to be awarded for this project. In its requests for proposals from prospective contractors, the Navy specified alternate transportation as a consideration for contract award. The Navy has elected to

award those contracts on the basis of ''best value'' rather than ''lowest price'' partly in order to encourage this more expensive, but less intrusive method of transportation. Specific transportation plans will be presented to the City of Coronado subsequent to contractor selection.

• Free passenger ferry service exists now between downtown San Diego and NAS North Island. Additional service to the north side of San Diego Bay is on track to begin in July 1996. A new pier will be constructed and a parking lot designated at the Antisubmarine Training Center in San Diego Harbor's West Basin. Initial service will include a 100-space parking lot, to be expanded to 300 spaces as passenger volume increases. Shuttle service from the North Island ferry terminal to work sites on base is already in place.

• Park and Ride sites at Imperial Beach and NAS Miramar are also being negotiated. Key here is identification of sites which are convenient to users. Other actions have been implemented to complement this measure, including prime parking spaces reserved for car pools, institution of van pools, guaranteed rides home for car and van pool riders as well as discounted mass transit fares.

Comments were also received expressing concern that the FEIS did not adequately address cumulative impacts associated with future replacement of North Island's two remaining conventionally powered aircraft carriers and other BRAC related actions. Chapter Six of the FEIS addressed cumulative impacts in quantitative detail, when practiable, for past, present and future projects at North Island and in the San Diego area.

Future Navy projects will be the subject of independent NEPA analysis. The cumulative impacts of past and present projects coupled with the CVN homeporting projects have not been determined to be significant.

Mitigation

The following mitigation measures will be employed to ensure minimization of environmental impacts associated with dredging and disposal operations: (1) Compliance with the permit conditions established by the COE, the California Regional Water Quality Control Board, and the California Coastal Commission which regulate dredging operations and define dredge sediment disposal locations; (2) adherence to the ''no barge overflow'' requirement; (3) adherence to a dredge and disposal monitoring plan for testing and evaluation of water quality parameters, selected chemical contaminants and measures of turbidity in the water column; (4) use of precision navigational equipment at both the dredging and disposal sites; and (5) placement of all dredged material suitable for beach nourishment nearshore for the protection of severely eroded beaches or a combination of nearshore and onshore disposal as previously described.

Traffic and socioeconomic impacts associated with the proposed CVN homeporting at NASNI are not significant in context because there have historically been three conventionally powered aircraft carriers (CVs) homeported at NASNI. A CVN has a personnel complement of approximately 102 personnel more than that of a CV. The depot-level maintenance facilities would increase personnel complement to an average of 750 personnel for a six-month maintenance availability period every 24 months. However, comparing the full-buildout year of 1999 with the baseline year of 1992 indicates there will be an overall decrease of 330 personnel.

Construction of the 13.4 acre bay fill area will result in the elimination of 13.4 acres of intertidal and shallow water subtidal habitat, including 3.9 acres of eelgrass located in the nearshore area. Mitigation will include the creation of 14 acres of new bay bottom, establishment of 8 acres of eelgrass and the creation of fish enhancement structures in the tidal area. Additionally compensation will include the relocation of burrowing owls from the mitigation area to other areas and the placement of clean sand from the mitigation site at two areas on NASNI to enhance habitat for the California least tern and Western snowy plover. Placement of the clean sand will not occur during the California least tern or the Western snowy plover nesting season. Further compensation for the plant species Nuttall's lotus and coast wooly-head at the mitigation site includes the removal and relocation of the top 6 inches of soil containing seeds from these plants, to another location, free from disturbance at NASNI. Impacts to nesting great blue herons, snowy egrets, and black-crowned night herons at the new maintenance facility site will be compensated by establishing replacement habitat at a site where there would be fewer long-term impacts by NASNI activities.

Questions regarding the Final Environmental Impact Statement prepared for this action may be directed to Mr. Robert Hexom, Environmental Planning, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132, telephone (619) 532–3761; fax (619) 532–3824.

Dated: December 13, 1995.

Duncan Holaday,

Deputy Assistant Secretary of the Navy, (Installations and Facilities).

[FR Doc. 30837 Filed 12–19–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Information Collection Activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval. The ICR is: NAEP Consumer Survey Research Study of the Achievement Levels for the U.S. History NAEP and the Geography NAEP.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Written comments should be submitted by February 20, 1996. Mail to: Susan Cooper Loomis, NAEP ALS Project Director, American College Testing, 2201 N. Dodge Street, Iowa City, Iowa 52243. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Director at the address above. Comments may also be submitted electronically by sending electronic mail (e-mail) to LOOMIS@ACT.ORG. Electronic comments must be submitted as an ASCII file and exclude any special characters and forms of encryption. Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as confidential business information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Susan Loomis, NAEP ALS Project Director, American College Testing,

2201 N. Dodge Street, Iowa City, Iowa 52243, Telephone: (310) 337–1048 or (800) 525–6929, e-mail: loomis@act.org.

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: NAEP Consumer Survey Research Study of the Achievement Levels for the U.S. History NAEP and the Georgraphy NAEP.

Affected Entities: Parties affected by this information collection are persons included in a broadly representative sample including persons identified as nominators of achievement levels-setting (ALS) panelists for pilot studies and ALS, as well as samples of subscribers to the Smithsonian magazine (for U.S. History) and The National Geographic for georgraphy.

Abstract: The purpose of this information collection activity is to gather information for NAGB regarding the achievement levels set for the 1994 NAEP in U.S. History and in Georgraphy. In particular, Congress has deemed that the achievement levels must be shown to be reasonable, valid, and informative to the public. This survey is designed to collect responses from individuals who are likely to have some interest in the ALS process (having been invited in 1994 to nominate individuals to serve as panelists for the ALS process) and individuals who are likely to have some interest in the subjects for which achievement levels have been developed.

A report has been developed in the form of a newspaper (The NAEP Reporter) to provide respondents information about the NAEP, and about the achievement levels. The ''newspaper'' report was developed as a means of providing information in a format that would be interesting to the respondent. Unlike actual newspaper articles that have reported on the recently-released results of the NAEP, this account does not judge the outcomes regarding student performances. That is, this report is objective and neither applauds nor decries the performance of students on the NAEP. A brief questionnaire elicits responses to questions regarding the usefulness and informativeness of the achievement levels for reporting NAEP results. The survey is printed on a postage-paid, self-mailer card.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated total respondent burden is 924 hours, and the average burden per respondent is .44 hours. This is a one-time survey. Individuals included in the survey will not be contacted for follow-up comments.

No small businesses nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is an appropriate method to determine the usefulness and informativeness of the achievement levels to the public.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

(iii) Evaluate whether the design of this survey maximizes the response rate, i.e. the number of persons who will respond, given the desire to have the sample be broadly representative of persons with some interest in the educational progress of K–12 students and in the general content of the disciplines of geography and U.S. history.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, from 8:30 AM to 5:00 PM.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–30899 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.004D]

Desegregation of Public Education-Desegregation Assistance Center (DAC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: Provides grants to operate regional DACs to enable them to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation.

Eligible Applicants: A public agency (other than a State educational agency or a school board) or private, nonprofit organization.

Deadline for Transmittal of Applications: February 2, 1996.

Deadline for Intergovernmental Review: April 2, 1996.

Applications Available: December 20, 1995.

Available Funds: The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates below of the amount of funds that will be available for grants under this program are based in part on the President's 1996 budget request, in part on the level of funding available in fiscal year 1995, and in part on Congressional action to date.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or reduce funding in 1996 for many of the discretionary grant programs administered by the Department. Final action on the 1996 appropriation may require the Department to cancel some of the competitions or to revise upward or downward the amount of funds estimated to be available for particular competitions.

Estimated Range of Awards: $400,000–$900,000.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85 and 86; except that 34 CFR 75.232 does not apply to grants under 34 CFR Part 272; and (b) the regulations for this program in 34 CFR Parts 270 and 272.

For Applications or Information Contact: Adell S. Washington, U.S. Department of Education, 600 Independence Avenue, S.W., Portals, Suite 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2495. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 42 U.S.C. 2000c–2000c–2,2000c–5

Dated: December 13, 1995.

Janice E. Jackson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–30891 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.004C]

Desegregation of Public Education-State Educational Agency (SEA) Desegregation Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To enable SEAs to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation of public schools.

Eligible Applicants: State Educational Agency.

Deadline for Transmittal of Applications: January 31, 1996.

Deadline for Intergovernmental Review: April 1, 1996.

Applications Available: December 20, 1995.

Available Funds: The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates below of the amount of funds that will be available for grants under this program are based in part on the President's 1996 budget request, in part on the level of funding available in fiscal year 1995, and in part on Congressional action to date.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or reduce funding in 1996 for many of the discretionary grant programs administered by the Department. Final action on the 1996 appropriation may require the Department to cancel some of the competitions or to revise upward or downward the amount of funds estimated to be available for particular competitions.

Estimated Range of Awards: $50,000–$200,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 53.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 78, 79, 80, 81, 82, 85 and 86; except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271; and (b) the regulations for this program in 34 CFR Parts 270 and 271.

For Applications or Information Contact: Adell S. Washington, U.S. Department of Education, 600 Independence Avenue, S.W., Portals, Suite 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2495. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: December 13, 1995.

Janice E. Jackson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–30890 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

CTM Tech, Inc.

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of Intent to Grant Exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to CTM Tech Inc., of Florence, South Carolina, an exclusive license to practice the invention described in U.S. Patent No. 5,137,314, entitled ''Catwalk Grate Lifting Tool.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive for a specified duration, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 20, 1996.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

FOR FURTHER INFORMATION: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 C.F.R. 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

CTM Tech Inc., of Florence, South Carolina, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,137,314, and has a plan for commercialization of the invention. A copy of the patent can be obtained from the U.S. Patent and Trademark Office, Washington, D.C. 20231. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209 (c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a royalty and other terms and conditions to be negotiated. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to

this notice, a determination is made in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on December 13, 1995.

Agnes P. Dover,

Deputy General Counsel.

[FR Doc. 95–30963 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

Invention Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that U.S. Patent No. 4,942,339, entitled ''Intense Steady State Electron Beam Generator'' is available for license, in accordance with 35 U.S.C. 207–209.

A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, D.C. 20231.

FOR FURTHER INFORMATION: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, DC, on December 13, 1995.

Agnes P. Dover,

Deputy General Counsel for Technology Transfer and Procurement.

[FR Doc. 95–30964 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–22–000, et al.]

Electric Rate and Corporate Regulation Filings; Pepperell Operations, Inc., et al.

December 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Pepperell Operations, Inc.

[Docket No. EG96–22–000]

Take notice that on December 5, 1995, Pepperell Operations, Inc., a corporation organized and existing under the laws of the State of Illinois, with its address at 1130 Lake Cook Road, Suite 300, Buffalo Grove, Illinois 60089 (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged directly and exclusively in the business of (A) operating an eligible facility located in Pepperell, Massachusetts and (B) based on agency relationships with facility owners, selling electric energy at wholesale. The Pepperell Plant consists of a nominal 38 MW combined-cycle cogeneration facility utilizing natural gas as its primary fuel and No. 2 fuel oil as a backup fuel.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Westar Electric Marketing, Inc.

[Docket No. ER96–458–000]

Take notice that on November 30, 1995, Westar Electric Marketing, Inc., tendered for filing amendments to its filing in the above referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER96–459–000]

Take notice that on December 5, 1996, Western Resources, Inc. tendered for filing amendments to its filing in the above referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER96–488–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report required under Article 2.3 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Part Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Power Company

[Docket No. ER96–489–000]

Take notice that on November 30, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing two transmission service agreements, dated November 20, 1995 (TSAs). The TSAs provide for transmission service to be made available to CPP pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. An effective date of January 1, 1996, was requested for both agreements.

A copy of the filing was served upon CPP and the Public Utility Commission of Ohio.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER96–490–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report in accordance with Article IV, Section A(2) of the North Hartland Transmission Service Contract (Contract) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T) under which CVPS transmits the output of the VG&T's 4.0 MW hydroelectric generating facility located in North Hartland, Vermont via a 12.5 kV circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER84–674–000 and was designated as Rate Schedule FERC No. 121.

Article IV, Section A(2) of the Contract requires CVPS to submit the forecast cost report applicable to a service year by December 1 of the preceding year.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER96–491–000]

Take notice that on November 30, 1996, New England Power Company (NEP), submitted for filing an amendment to the March 15, 1982 service agreement for transmission service to Taunton Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER96–492–000]

Take notice that on November 30, 1995, Central Illinois Public Service Company (CIPS), submitted two Service Agreements, dated November 14, 1995, establishing Missouri Public Service (Missouri) and WestPlains Energy-Kansas (WestPlains) as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff) and a Service Agreement, dated November 15, 1995, establishing Aquila Power Corporation (Aquila) as a CST–1 customer.

CIPS requests effective dates of November 14, 1995 for the service agreements with Missouri and WestPlains and the revised Index of Customers and of November 15, 1995, for the service agreement with Aquila. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Aquila, Missouri, WestPlains and the Illinois Commerce Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER96–494–000]

Take notice that on November 30, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements between SCS, as agent of the Southern Companies, and i) Industrial Energy Applications, Inc. and ii) Citizens Lehman Power Sales for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Energy Marketing, Inc.

Docket No. ER96–497–000]

Take notice that on December 1, 1995, Southern Energy Marketing, Inc. (Southern Energy) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Southern Energy has satisfied the requirements for WSPP membership. Accordingly, Southern Energy requests that the Commission amend the WSPP Agreement to include it as a member.

Southern Energy requests waiver of the 60-day prior notice requirement to permit in membership in the WSPP to become effective as of November 27, 1995.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER96–498–000]

Take notice that on December 1, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing Modification No. 26 dated November 30, 1995 to the Interconnection Agreement dated February 1, 1948 between Virginia Power and Appalachian Power Company (Appalachian). The Commission has previously designated the 1948 Agreement as Virginia Power's Rate Schedule FERC No. 7 and Appalachian's Rate Schedule FERC No. 16. Virginia Power also has tendered for filing certain agreements addressing data acquisition facilities and taxes that are related to Modification No. 26.

Modification No. 26 provides for a new point of interconnection between Virginia Power and Appalachian.

Copies of the filing were service upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Public Service Commission of West Virginia and Appalachian Power Company.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–499–000]

Take notice that on December 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Industrial Energy Application (IEA).

Con Edison states that a copy of this filing has been served by mail upon IEA.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–500–000]

Take notice that on December 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Louis Dreyfus Electric Power, Inc. (LDEP).

Con Edison states that a copy of this filing has been served by mail upon LDEP.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. ER96–502–000]

Take notice that on December 1, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *PECO Energy Company* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER96–503–000]

Take notice that on December 1, 1995, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *PECO Energy Company* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER96–504–000]

Take notice that on December 1, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division,

WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *PECO Energy Company*, pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER96–505–000]

Take notice that on December 1, 1995, Long Island Lighting Company (LILCO), tendered for filing a Letter Agreement dated November 15, 1995, between LILCO and the New York Power Authority (NYPA) concerning power deliveries to Grumman-Northrop Corporation under Lilco-FERC Rate Schedule No. 34. LILCO requests an effective date of July 1, 1995.

LILCO states that copies of this filing have been served by LILCO on the New York State Public Service Commission and NYPA.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER96–506–000]

Take notice that on December 1, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Enron Power Marketing, Inc. FPL requests an effective date of December 4, 1995.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30883 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–P

Hydroelectric Application Filed with the Commission

November 30, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No: 8794–040.

c. Date Filed: November 13, 1995.

d. Applicant: Southern New Hampshire Hydroelectric Development Corporation.

e. Name of Project: Rimmon Pond Project.

f. Location: Naugatuck River, New Haven County, in the Town of Seymour, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: John N. Webster, P.O. Box 78, South Berwick, ME 03908, (207) 384–5334.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: January 12, 1996.

k. Description of Application: The licensee states that the power purchase contract has been canceled and the project is now uneconomical.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30880 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

Hydroelectric Application Filed With the Commission

December 5, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment to License.

b. Project No: 1121–034.

c. Date Filed: August 4, 1995.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Battle Creek.

f. Location: North Fork Battle Creek, Shasta County, near Shingletown.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Cynthia Kayer, Pacific Gas and Electric Company, P.O. Box 770000, P10A San Francisco, CA 94177, (415) 973–3642.

i. FERC Contact: Robert Grieve, (202) 219–2655.

j. Comment Date: January 22, 1996.

k. Description of Application: Article 33(f) requires maintenance of North Battle Creek Reservoir at full capacity during the annual recreation season from April 1 through September 10 of each year and 75 acre-feet from September 11 through March 31. Applicant proposes to revise article 33(f) to require maintenance of North Battle Creek Reservoir at or above 1,039 acre feet capacity during the annual recreation season from June 1 through September 10 of each year and 75 acre-

feet from September 11 through March 31.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protects or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30882 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–95–011]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 14, 1995.

Take notice that on December 11, 1995, Colorado Interstate Gas Company (CIG), tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions and affected parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30864 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–102–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

December 14, 1995.

Take notice that on December 8, 1995, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue S.E., Charleston, West Virginia 25314–1599, file in Docket No. CP96–102–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection in Acadia Parish, Louisiana under Columbia Gulf's blanket certificate issued in Docket No. CP83–496–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate a bi-directional interconnection with Egan Hub Partners (Egan) in Acadia Parish, Louisiana. The interconnection has been requested by Egan and the service will be provided on an interruptible basis and therefore, no impact is expected on Columbia Gulf's existing design day and annual obligation to its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30867 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–19–000]

Columbia Gulf Transmission Company; Notice of Refund Report

December 14, 1995.

Take notice that on October 25, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a Report of Gas Research Institute (GRI) Refund. Columbia Gulf states that the refund report is being made in accordance with Ordering Paragraph C of the Commission's February 22, 1955 ''Order Approving Refund Methodology For 1994 Overcollections'' in Docket No. RP95–124–000.

Columbia Gulf states that it has credited the GRI refund to its eligible firm customers as a credit to invoices issued on or around September 10, 1995. The refund totalling $209,205.00 represented overcollections of GRI surcharges for the period January 1, 1994 through December 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30868 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA94–15–000]

Florida Gas Transmission Company; Order Establishing Hearing Procedures

Issued: December 14, 1995.

On September 8, 1995, the Deputy Chief Accountant issued a contested audit report under delegated authority noting Florida Gas Transmission Company's (Florida Gas) disagreement with respect to certain recommendations of the Division of Audits. [1] Florida Gas was requested to advise whether it would agree to the disposition of the contested matters under the shortened procedures provided for by Part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

By letter dated November 7, 1995, Florida Gas responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing. The arguments made by Florida Gas in its November 7, 1995 response may be raised at the hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of Florida Gas's accounting practices as discussed in the audit report.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30881 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 72 FERC ¶ 62,243. The contested matters are discussed in Part I of the letter order. The letter order was amended by reissuance of Part I on October 11, 1995, correcting amounts reported in Part I related to the capitalization of the allowance for funds used during construction on Phase III facilities. The letter as published in the FERC Reports at the cite noted above incorporates the October 11 revision.

[Docket No. RP95–448–002]

Northern Border Pipeline Company; Notice of Tariff Filing

December 14, 1995.

Take notice that on December 11, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute First Revised Sheet Number 110.

Northern Border states that the filing is in compliance with the Commission's order, issued November 30, 1995, in the above-referenced docket. Northern Border further states that the November 30 Order required Northern Border to resubmit Sheet No. 110 to correctly reflect the proper supersession.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. Pursuant to Section 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30863 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2114–040]

Public Utility District No. 2 of Grant Country, Washington; Notice of Application for Approval of Contracts for the Sale of Power for a Period Extending Beyond the Term of the License

December 14, 1995.

On October 16, 1995, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. 815, and the Commission's order in Kootenai Electric No. 2 of Grant Country, Washington (Grant County), filed an application requesting Commission approval of contracts for the sale of power from the Wanapum Development of its licensed Priest Rapids Project No. 2114, for the approximately four-year period that the power sales contracts extends beyond the 2005 expiration date of the project's license. The project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington.

Section 22 provides that contracts for the sale and delivery of power for period extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service Commission or other similar authority in the state in which the sale of delivery or power is made. Grant County states in its application that Commission approval of the Wanapum Development power sales contracts is required because the revenues from those contracts have been pledged to secure repayment of bonds (which expire when the power sales contracts expire) that the licensee issued to finance construction of the Wanapum Development.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by the 30th day following publication of this notice in the Federal

Register; must bear in all capital letters the title ''COMMENTS,'' ''PROTESTS,'' or ''MOTION TO INTERVENE,'' as applicable, and ''Project No. 2114–040.'' Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the license specified in its application.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30866 FIled 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11072, NY]

Trenton Falls Hydroelectric Company; Notice Not Ready for Environmental Analysis, Notice Requesting Interventions and Protests, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

December 14, 1995.

On December 5, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Trenton Falls Hydroelectric Company's application for the Boyd Dam Hydroelectric Project, located on the East Branch of Fish Creek in Lewis County, New York.

The Boyd Dam's principal features would consist of a 210-acre impoundment, an existing concrete gravity and earthfill dam with a 150-foot-long spillway section, a modified concrete intake structure, which would contain a single 795-kilowatt (Kw) generator, an upgraded 3.5-mile-long transmission line, and appurtenant facilities. With a total authorized installed capacity of 795 Kw, the project would have an average annual generation of about 6.9 megawatthours.

The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to: (1) invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' OR ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 C.F.R. 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled ''Scoping Document I'' (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and public comments to scoping, whether licensing the Boyd Dam Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commentors *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.⅕.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format then write the files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should show the following captions on the first page: Boyd Dam Hydroelectric Project, FERC No. 11072.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Mike Dees, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, N.E., Washington, D.C. 20426, or at (202) 219–2807.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30865 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of $275,000,000 (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc., Case No. VEF–0030. The OHA has tentatively determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed in duplicate by January 19, 1996, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107. All comments should conspicuously display a reference to Case No. VEF–0030.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 586–2390 [Wieker]; (202) 586–2400 [Freimuth].

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $275,000,000 plus interest, remitted or to be remitted to the DOE by Occidental Petroleum Corporation. The DOE is currently holding $100,000,000, plus accrued interest, of these funds in an interest bearing escrow account pending distribution. The DOE will receive additional annual payments of $35,000,000 plus interest during the years 1996 through 2000.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. Any party whose crude oil application is approved will share in all crude oil overcharge funds.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585–0107.

Dated: December 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation Order

Name of Case: OXY USA, Inc.
Date of Filing: September 18, 1995
Case Number: VEF–0030

The Office of General Counsel, Regulatory Litigation (OGC), formerly the Economic Regulatory Administration (ERA), filed a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The Petition concerns funds remitted to the DOE pursuant to a Consent Order executed by the DOE and Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA, Inc. (OXY). OXY was formerly Cities Service Oil and Gas Corporation, which in turn was a successor in interest to Cities Service Corporation (Cities). Unless otherwise indicated, the firms collectively are referred to as Occidental.

Pursuant to the Consent Order, Occidental agreed to remit $100 million within 30 days of the Consent Order and then to make five annual payments of $35 million plus interest. On September 17, 1995, OXY remitted $100 million to the DOE.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations which were resolved by the Consent Order. This Decision and Order sets forth the OHA's proposed procedures for distributing the consent order funds.

I. Background

The Consent Order at issue was executed on June 27, 1995 in proposed form. The DOE published notice of the Proposed Consent Order and the opportunity to file comments. See 60 FR 35186 (July 6, 1995). Following the comment period, the DOE issued the Proposed Consent Order as a final order, pursuant to 10 C.F.R. 205.199J. See 60 FR 43130 (August 18, 1995).

The Consent Order covers the period October 1, 1979 through January 27, 1981 and reflects the resolution of enforcement proceedings related to 91 reciprocal crude oil transactions engaged in by Cities during that period. In those transactions, Cities sold price-controlled crude oil in its refinery inventory in exchange for deeply discounted exempt crude oil.

In 1988, the DOE issued a Remedial Order (RO) holding that the transactions violated the price regulations and that the violation amount of $264 million, plus interest, should be remitted to the DOE. *Cities Service Oil and Gas Corp.,* 17 DOE ¶ 83,021 (1988). The 1988 RO also remanded the issue of whether the transactions violated other regulations.

In 1992, the OGC issued a Revised Proposed Remedial Order (RPRO), specifying an alternate liability of $254 million, plus interest, on the ground that 83 of the transactions violated the entitlements reporting requirements. OXY filed objections to the RPRO with the OHA. *OXY USA, Inc.,* Case No. LRO–0003 (dismissed August 30, 1995). The case was ready for oral argument at the time of the June 27, 1995 execution of the Proposed Consent Order.

During the pendency of the OHA proceeding on the RPRO, the Federal Energy Regulatory Commission (FERC) reversed the 1988 RO. *Cities Service Oil and Gas Corp.,* 65 FERC ¶ 61,403 (1993), *reconsideration denied,* 66 FERC ¶ 61,222 (1994). After FERC's denial of reconsideration motions filed by the DOE and intervenor parties, intervenor parties appealed to federal district court, which dismissed their appeals for lack of standing. *Alabama* v. *FERC,* 3 Fed. Energy Guidelines ¶ 26,693 (D.D.C. June 8, 1995). One of the intervenors had noticed an appeal at the time of the June 27, 1995 execution of the Proposed Consent Order. See 60 FR 35187 note 2.

Although the Consent Order resulted from the enforcement proceeding involving the 91 reciprocal crude oil transactions, the Consent Order is global. The Consent Order provides that it settles all pending and potential civil and administrative claims against Occidental

under the federal petroleum price and allocation regulations during the consent order period. Thus, the Consent Order settles not only issues related to the 91 reciprocal transactions but also any other potential liability of Occidental with respect to its compliance with the federal price and allocation regulations during the consent order period .

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 *et seq.;* see also *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

III. Proposed Refund Procedures

A. The DOE's Modified Statement of Restitutionary Policy

The distribution of crude oil overcharge funds is governed by the DOE's July 1986 Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 Fed. Reg. 27899 (August 4, 1986). The MSRP was issued in conjunction with the Stripper Well Settlement Agreement. See In re: The Department of Energy Stripper Well Exemption Litigation. 653 F. Supp. 108 (D. Kan. 1986).

Under the MSRP, up to 20 percent of crude oil overcharge funds may be reserved for direct restitution to injured purchasers, with the remainder divided equally between the states and the federal government. The MSRP also specifies that any funds remaining after all valid claims by injured purchasers are paid be disbursed to the states and the federal government in equal amounts.

In August 1986, shortly after the issuance of the MSRP, the OHA issued an Order that announced that the MSRP would be applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order). In response, parties filed comments.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. See 52 FR 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil funds under the Subpart V regulations. A crude oil refund applicant was only required to submit one application for its share of crude oil overcharge funds.

Consistent with the foregoing, the OHA accepted refund applications from 1987 until the June 30, 1995 deadline. See 60 FR 19914 (April 20, 1995). Applicants who filed before the deadline and whose applications are approved will share in the crude oil overcharge funds. Approved applicants are currently receiving $.0016 per gallon of purchased refined product.

B. Proposal To Distribute the OXY Consent Order Funds in Accordance With the MSRP

We have tentatively determined that all of the consent order funds are crude oil funds and, therefore, should be distributed in accordance with the MSRP. Although the Consent Order was global, i.e., it settled any potential claims against Occidental, the Consent Order was the result of a pending enforcement proceeding related to OXY's reciprocal purchases and sales of crude oil and the reporting of the purchased crude oil to the DOE Entitlements Program. The Consent Order does not identify any potential refined product claims, let alone indicate that any such potential violations were taken into account in arriving at the settlement amount. In fact, a provision in the Consent Order refers to an apportionment of the principal portion of consent order funds as payments of the principal and interest sought by the agency based on the ratio of principal and interest sought in the RPRO.[1] In addition to the Consent Order itself, the Notice of Proposed Consent Order and the Petition for Implementation of Special Refund Procedures both support the conclusion that the consent order funds are crude oil funds. The Notice of Proposed Consent Order indicates that the settlement amount was determined by reference to the litigation concerning the reciprocal crude oil transactions. See 60 FR at 35187 (Part II. Determination of Reasonable Settlement Amount). The Petition for Implementation of Special Refund Procedures states that the alleged violations underlying the Consent Order concern the improper reporting of crude oil certifications to the Entitlements Program, i.e., the claim in the RPRO. Petition at 2. Under the foregoing circumstances, we have tentatively determined that 100 percent of the consent order funds are crude oil funds.[2]

Because we have tentatively determined that 100 percent of the consent order funds are crude oil funds, we propose to distribute the funds according to the MSRP. We propose to reserve initially the full 20 percent ($55 million), plus accrued interest, for direct restitution to injured purchasers of crude oil and refined petroleum products. We propose to distribute the remaining 80 percent ($220 million) in equal shares to the states and the federal government.

[1] Section 406 provides in full:

Inasmuch as this Consent Order settles both the principal and interest portions of all claims made by the DOE against Occidental, the principal portion of the payments made pursuant to paragraphs 402 through 404 shall be deemed to be a payment of principal and interest in the same ratio that the principal portion of the DOE's claim in the proceeding styled In the Matter of OXY USA Inc., Case No. LRO–0003, bears to the interest portion of the DOE's claim in that case as of the Effective Date.

60 FR at 35189.

[2] See *generally Mt. Airy Refining Co.,* 24 DOE ¶ 85,094 at 88,305 n.1 (1994) (consent order funds considered crude oil funds where most of consent order funds related to crude oil violations); *DeMenno-Kerdoon,* 23 DOE ¶ 85,046 at 88,112 n.1 (1993) (global consent order funds considered crude oil funds where the funds were less than the crude oil violations alleged in PRO that was settled by the consent order).

As indicated above, the funds reserved for direct restitution to injured purchasers will be available for distribution through OHA's Subpart V crude oil overcharge refund proceeding. We have previously discussed the application requirements and standards that apply in that proceeding. Because the deadline for the filing of applications has now passed, we do not believe that it is necessary to reiterate those matters. In accordance with the MSRP, we propose that any funds remaining after the conclusion of the Subpart V crude oil overcharge refund proceeding be disbursed to the states and the federal government in equal shares.

With respect to the funds made available to the states for indirect restitution, we note that the share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement. Based on the foregoing, we propose that the $100 million initial payment made by Occidental be disbursed as follows: $20 million, plus accrued interest, to the DOE interest-bearing escrow account for crude oil claimants, $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the states, and $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the federal government. We propose that, upon remittance to the DOE, Occidental's subsequent five annual payments of $35 million, plus accrued interest, be distributed to the same accounts in the same proportions.

It is therefore ordered That:

The consent order funds remitted by Occidental Petroleum Corporation will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–30960 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Loveland Area Projects, Post-1999 Resource Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Completion.

SUMMARY: In accordance with the Post-1989 General Power Marketing and Allocation Criteria (Criteria), Pick-Sloan Missouri Basin Program-Western Division, published in the Federal Register on January 31, 1986 (51 FR 4012), the Western Area Power Administration's (Western) Loveland Area Office (LAO) has completed a hydrological study to determine the available electric power resources for the period starting with the first day of the October 1999 billing period through the last day of the September 2004 billing period. The results of the study show that there is an energy deficit and

some surplus capacity available in the post-1999 period. The annual energy deficit is 3.3 percent of the total annual energy resource. The deficit occurs in the winter season when LAO has historically purchased energy. Western has reviewed the study results and concluded that the energy resource, even though deficit, will be sufficient to meet the current contractual commitments with minor energy purchases. The available capacity will be used to maintain operation flexibility. Therefore, there is no need to change the allocated amounts of energy with capacity under the Criteria between 1999 and 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, Telephone: (970) 490–7201.

Regulatory Procedural Requirements

The authority upon which Western allocates and contracts for electric service is based upon the provisions of the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); the Department of Energy Organization Act of 1977 (42 U.S.C. 7152, 7191); the Flood Control Act of 1944 (58 Stat. 891); the Fryingpan-Arkansas Project Acts of 1962 and 1974 (Pub. L. 87–590, 76 Stat. 389 and Pub. L. 93–493, 88 Stat. 1497); and acts amending or supplementing the foregoing legislation.

Background

Power produced by the Loveland Area projects is marketed pursuant to the Criteria. LAO's firm electric service contracts executed under the Criteria expire on the last day of the September billing period in 2004. The Criteria states ''* * * at the end of the 1999 summer season billing period, the provisions of the contracts concerning the amounts of energy and capacity committed will be subject to revision based on the marketable resource. Any necessary revisions to these contract provisions will be determined by Western and presented to the contractors by the end of the 1996 summer season billing period.'' The available resources in the Criteria were determined by duplicating the river systems with a hydrological computer modeling program and calculating what the available energy and capacity would be using this data. The marketable capacity was calculated using a 90-percent probability of exceedance factor.

The energy portion of the Post-1999 Resource Study uses the average of the actual monthly generation rather than a calculated amount of energy using a hydrological computer simulation model. The capacity portion of the study uses essentially the same methodology as used in the Criteria. The results of the Post-1999 Resource Study show that there is an energy deficit and some surplus capacity available.

	Resources	
	Post 1999 marketable	Difference from contract
Winter Energy (GWh)	821.1	(89.2)
Summer Energy (GWh)	1,153.1	23.1
Total Energy (GWh)	1,974.2	(66.1)
Winter Capacity (MW)	538.5	42.0
Summer Capacity (MW)	606.7	16.7

Environmental Compliance

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*) and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) require that the environmental effects of agency actions be studied and considered by decision makers. DOE issued Implementing Procedures and Guidelines for the National Environmental Policy Act at 10 CFR Part 1021. Performance of this resource study meets the definition of a categorical exclusion, which is a category of actions defined at 40 CFR 1508.4 and listed in Appendix A to Subpart D of the DOE Implementing Procedures for which neither an environmental assessment nor an environmental impact statement is usually required. The applicable categorical exclusion is found at A9 in Appendix A to Subpart D.

Issued at Washington, DC, December 11, 1995.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 95–30959 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5399–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1426.04.

SUPPLEMENTARY INFORMATION:

Title: EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response, OMB Control # 2050–0105, EPA ICR # 1426.04, expiration 1–31–96. This is a request for extension, without change, of a currently approved collection.

Abstract: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) require EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: those in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities; and employees involved in emergency response operations without regard to location. This ICR renews the existing mandatory recordkeeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste sites maintaining records of employee training, refresher training, medical exams, and reviewing emergency response plans. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this

collection of information was published on 11/06/95 (60 FR 176).

Burden Statement: The annual public reporting and recordkeeping burden for this collection is estimated to average 10.64 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; and complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local employees engaged in hazardous waste operations and emergency response in states without an OSHA approved State plan.

Estimated Number of Respondents: 24,000.

Frequency of Response: On-going records maintenance.

Estimated Total Annual Hour Burden: 255,427 hours.

Estimated Total Annualized Cost Burden: None.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1426.04 and OMB Control No. 2050–0105 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW 20503

Dated: December 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30983 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 619.07.

SUPPLEMENTARY INFORMATION:

Title: Mobile Source Emission Factor Survey—2060–0078. This is a rerenewal of an existing collection.

Abstract: The EPA Emission Inventory Group, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. The owner is also asked to complete a multiple choice form of nine questions that summarize vehicle usage. There are two methods of soliciting the general public for participation in Emission Factor Program (EFP):

Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists. Motor vehicle owners, who arrive at State inspection lanes for yearly certification, are randomly solicited. Information from the EFP provides a basis for developing

State Implementation Plans (SIPs), Reasonable Further Progress (RFP) reports, attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

The legislative basis for the Emission Factor Program is Section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to ''conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution'' and ''conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *''

EPA uses the data from the EFP to verify predictions of the computer model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the auto industry, and other parties interested in estimating mobile source emissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on Thursday, September 21, 1995 FR Vol. 60, No. 183 Page 48980.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes to 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: are the general public that own on road motor vehicles.

Estimated Number of Respondents: 1,600.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 2,237 Hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 619.07 and OMB control No. 2060–0078 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management And Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: December 5, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30795 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL—5398–4]

Agency Information Collection Activities Under OMB Review; NESHAP for Benzene Emissions From Bulk Transfer Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 350 *et seq.*), this notice announces that the Information Collection Request (ICR) for NESHAP for Benzene Emissions from Bulk Transfer Operations described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer, United States Environmental Protection Agency, 202–260–2740, and refer to EPA ICR No. 1154.04 and OMB No. 2060–0182.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Benzene Emissions from Bulk Transfer Operations—40 CFR Part 61, Subpart BB, OMB No. 2060–0182. This is request for a revision of a currently approved collection.

Abstract: The National Emission Standards for Benzene Emissions from Benzene Transfer Operations were proposed on September 14, 1989 and promulgated on March 7, 1990. The standards are codified at 40 CFR Part 61, Subpart BB.

These standards apply to the following facilities in benzene transfer operations: the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. Specifically exempted from the regulation are loading racks at which only the following are loaded: benzene-laden waste (covered under Subpart FF of Part 61), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. Any affected facility which loads only liquid containing less than 70 weight-percent benzene or whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the control requirements and need only maintain records and submit an initial report. The control requirements for bulk transfer facilities require that benzene emissions be routed to a control device that achieves a 98 weight-percent emissions reduction, and (2) that loading of benzene be limited to vapor-tight tank trucks or vapor-tight railcars.

Owners or operators of the affected facilities described must take the following one-time-only notices or reports: notification of anticipated startup; notification of actual startup; initial compliance report (or control exemption by sources below cut-off); notification of emission test, report following an emission test; notification of a monitoring system performance test; and report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Monitoring and recording requirements specific to benzene transfer operating include vapor-tightness documentation, and monitoring and operation parameters specific to the control method chosen (incinerator, vent valves status, steam generator, process heater, flare, carbon adsorption). Sources must maintain records of periods exceeding most recent performance test parameters, including the date and time of any exceedance or deviation, the nature and cause of the malfunction and corrective measures taken.

Owners or operators are also required to maintain records of the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. Reporting requirements specific to benzene transfer operations include an initial engineering report and a quarterly report by affected facilities subject to the standards at § 61.302. The quarterly reports include excess emissions and deviations in operating parameters. Sources not subject to the control standards must continue to record information and must file a report only the first year.

Monitoring and record keeping requirements specific to benzene transfer operations provide information on the operation of the emissions control device and compliance with the standards. Any owner or operator subject to the provisions of this part shall maintain an up-to-date file of these measurements and recordings, and retain them for at least two years following. Vapor tightness documentation, and control device parameters must be kept permanently.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 C.F.R. Charter 15. The Federal Register Notice required under 5 C.F.R. 1320.8(d), soliciting comments on this collection of information was published on September 28, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25.34 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 81.

Estimated Number of Respondents: 81.

Frequency of Response: 324 per year.

Estimated Total Annual Hour Burden: 14,685 Hours.

Estimated Total Annualized Cost Burden: $447,158.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1154.04 and OMB Control No. 2060–0182 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: November 30, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30792 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5399–4]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: United States Department of Defense; Meddybemps, ME

AGENCY: U.S. Environmental Protection Agency

ACTION: Notice of proposed administrative settlement and request for public comment

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the United States Department of Defense for costs incurred by EPA in conducting response actions at the Eastern Surplus Superfund Site in Meddybemps, Maine.

DATES: Comments must be provided on or before January 19, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: In re: United States Department of Defense, Meddybemps, Maine, U.S. EPA Docket No. CERCLA-I–93–1044.

FOR FURTHER INFORMATION CONTACT: LeAnn W. Jensen, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCU, Boston, Massachusetts 02203, (617) 565–4906.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Eastern Surplus Superfund Site in Meddybemps, ME. The settlement was approved by EPA Region I on August 14, 1995, subject to review by the public pursuant to this Notice. The United States Department of Defense, the Settling Party, has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Settling Party is required to pay $1,400,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of Section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under Section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on October 27, 1995.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from LeAnn W. Jensen, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCU, Boston, Massachusetts 02203, (617) 565–4906.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA-I–93–1044).

Dated: November 13, 1995.

John DeVillars,

Regional Administrator.

[FR Doc. 95–30982 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc., P & O Cruises (UK) Limited and Abbey National March Leasing (1) Limited, 77 New Oxford Street, London WC1A 1PP, England, Vessel: CANBERRA

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc. and P & O Cruises (UK) Limited, 77 New Oxford Street, London WC1A 1PP, England, Vessel: ORIANA

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc., P & O Cruises (UK) Limited and 3I Plc, 77 New Oxford Street, London WCIA IPP, England, Vessel: VICTORIA

Dated: December 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30925 Filed 12–19–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Person knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Gaeli, Inc., 8181 NW 36th Street, Suite 9A, Miami, FL 33166, Officers: Dany Weil, President, Ira Weil, Vice President

Red Hot Transport, 618 Noe Street, San Francisco, CA 94114, Gina Fregosi, Sole Proprietor

Dart Express (SPO) Inc., 1162 Cherry Avenue, San Bruno, CA 94066, Officers: Teddy Tam, President, Dean Huang, Chief Financial Officer

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 15, 1995.

[FR Doc. 95–30927 Filed 12–19–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board requests comment on the proposed one-time Check Fraud

Survey. This survey will help the Federal Reserve to fulfill the Congressional mandate that the Board report to Congress on the advisability of modifying the Expedited Funds Availability Act (EFAA) to extend the maximum permissible hold period for local checks as a means of decreasing losses related to check fraud. The Congress further directed the Board to consider whether there is a pattern of significant increases in losses related to check fraud at depository institutions attributable to the provisions of the EFAA; to consider whether an extension by one day of the period between the deposit of a local check and the availability of funds for withdrawal would be effective in reducing the volume of losses related to check fraud; and to make recommendations for legislative actions. Data collected from the survey will cover the period January 1, 1995, through December 31, 1995.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Comments, which should refer to OMB control number 7100–0279, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Comments may also be delivered to Room B–2222 between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 12 CFR 261.8 of the Board's rules regarding availability of information.

Comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed survey and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents, may be requested from Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For further information regarding the purpose and content of the proposed survey contact Jack Walton, Manager (202/452–2660), or Michelle Braun, Senior Financial Services Analyst (202/452–2819), Check Payments section, Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson (202–452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1995, as per 5 CFR 1320.16, to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in the Paperwork Reduction Act (5 CFR 1320 Appendix A.1). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the Paperwork Reduction Act Submission (OMB 83–I) and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The survey, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed survey, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

II. Proposal to Approve Under OMB Delegated Authority the Following Report

Report title: Federal Reserve Check Fraud Survey.

Agency form number: FR 3080.

OMB control number: 7100–0279.

Frequency: one time.

Reporters: depository institutions.

Annual reporting hours: 14,976.

Estimated average hours per response: 9.

Number of respondents: 1,664.

Small businesses are affected: This information collection is voluntary [Public Law 103–325, Title III, section 333] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

III. Justification

The 1994 Community Development Banking Act states that the Board shall ''conduct a study on the advisability of extending the 1-business-day period specified in section 603(b)(1) of the Expedited Funds Availability Act (EFAA), regarding availability of funds deposited by local checks, to 2 business days.'' The report is to be submitted to the Congress by September 1996. The Congress further directed the Board to consider:

- Whether there is a pattern of significant increases in losses related to check fraud at depository institutions attributable to the provisions of the EFAA;
- Consider whether an extension by one day of the period between the deposit of a local check and the availability of funds for withdrawal would be effective in reducing the volume of losses related to check fraud; and
- Make recommendations for legislative action.

To respond to the request of the Congress, the Board proposes that a survey of check fraud be conducted. The survey will gather information about the relationship of all funds availability schedules mandated in the EFAA to check-fraud losses as well as specific information about the types of check fraud and the causes of check-fraud losses at depository institutions.

The proposed survey not only addresses the effect of the mandatory availability schedule for local checks on check-fraud losses, but it also addresses next-day and nonlocal funds availability schedules. In addition, it includes questions about the amount of losses by type of check fraud, the amount of losses by type of check, and the volume of checks cleared. Finally, preliminary research, which has consisted of discussions with representatives of trade associations of depository institutions and of other industries affected by check fraud and reviews of the associations' studies, indicated that several other areas should be addressed in the Board's study. Therefore, the proposed survey includes questions about losses by age of account, losses that could be attributed to organized or professional efforts, and the resources that the respondent's institution expends annually to prevent, detect, and prosecute check fraud. The data will enable the Board to characterize the dynamics of check fraud for the Congress, determine the significance of check-fraud losses and check-fraud prevention, and to develop recommendations that may assist in reducing check-fraud losses.

IV. Request for Comments

The Board requests comments on all aspects of the survey. The Board specifically requests comments on the following aspects:

A. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

B. Ways to enhance the quality, utility, and clarity of the information to be collected;

C. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; and

D. Ways to minimize the burden of the information collection on respondents, such as using automated collection techniques or other forms of information technology.

Board of Governors of the Federal Reserve System, December 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30892 Filed 12–19–95; 8:45am]

Billing Code 6210–01–P

Kenneth B. and Moira F. Mumma, et al.; 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. Once the notices have been accepted for processing, they will also 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 January 3, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Kenneth B. and Moira F. Mumma, to acquire a total of 27.5 percent of the voting shares of New Century Bank, Phoenixville, Pennsylvania (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Joseph H. Frampton, Paducah, Kentucky; to acquire an additional 2.91 percent, for a total of 27.02 percent, of the voting shares of Paducah Bank Shares, Inc., Paducah, Kentucky, and thereby indirectly acquire Paducah Bank and Trust Company, Paducah, Kentucky.

Board of Governors of the Federal Reserve System, December 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30854 Filed 12–19–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0402]

Peroxid-Chemie GmbH; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Peroxid-Chemie GmbH has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by January 19, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4489) has been filed by Registration and Consulting Co., Ltd., on behalf of Peroxid-Chemie GmbH, c/o Bruce A. Schwemmer, 55 River Dr. South No. 1808, Jersey City, NJ 07310. The petition proposes to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers complying with 21 CFR 177.2600 for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 19, 1996, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 4, 1995.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–30887 Filed 12–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0405]

Drug Export; SELECTOGEN® 0.8%, Reagent Red Blood Cells

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the human biological product SELECTOGEN® 0.8%, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France,

Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., 1001 U.S. Hwy. 202, Raritan, NJ 08869–0606, has filed an application requesting approval for the export of the human biological product SELECTOGEN® 0.8%, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The SELECTOGEN® 0.8%, Reagent Red Blood Cells, is an in vitro diagnostic test kit for the detection of unexpected blood group antibodies in test methods requiring a 0.8 percent red cell suspension in a low ionic strength diluent. The application was received and filed in the Center for Biologics Evaluation and Research on November 24, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 2, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 4, 1995.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–30886 Filed 12–19–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Extension, No Change—The Data Bank forms and regulations received a short-term approval in June 1995. As part of the terms of clearance, HRSA was required to submit an updated analysis of small medical malpractice payments (concerning the issue of monetary threshold reporting of claims) and provide OMB with an updated chart of the distribution of malpractice awards. The requirements have been satisfied and the Data Bank regulations and forms are now being resubmitted for a 3-year approval. This request is for an extension with no changes. The burden estimates are as follows:

Title	Number of respondents	Frequency of response	Number of responses	Hours per response	Total burden hours
60.6(a) Reporting Corrections of Errors and Omissions	2,800	1.04	2,925	.25	731
60.6(b) Revisions to Original Report Actions	350	1.06	370	.75	278
60.7(b) Reporting Medical Malpractice Payments	150	105.33	15,800	.75	11,850
60.8(b) Reporting Licensure Action by State Boards	125	21.02	2,630	.75	1,973
60.9(a) Reporting Privileging and Professional Society Actions	1,000	1.08	1,075	.75	806
60.9(c) Request for Hearings by Entitles Found in Noncompliance	1	1	1	8.00	8
60.10(a)(1) Hospital Queries on Applicants; 60.11(a)(1) Other Hospital Queries; 60.11(a)(6) Queries for Professional Review	7,200	38.33	276,000	.08	23,000
60.10(a)(2) Biennial Queries by Hospitals	6,000	186.83	1,121,000	.08	93,417
60.11(a)(2) Practitioner Queries	29,000	1	29,000	.25	7,250
60.11(a)(3) State Licensure Board Queries	70	171	12,000	.08	1,000
60.11(a)(4) Queries by Non-hospital Health Care Entities	1,860	139.78	260,000	.08	21,667
60.11(a)(5) Queries by Attorneys	10	1	10	.25	3
60.11(a)(7) Queries for Research Purposes	100	1	100	1.00	100
60.14(b) Practitioner's Disputing Data Bank Reports	1,080	1	1,080	.17	180
60.14(b) Practitioner Requests for Secretarial Review	100	1	100	8.00	800
60.14(b) Practitioner Statements	2,700	1	2,700	1.00	2,700

Title	Number of respondents	Frequency of response	Number of responses	Hours per response	Total burden hours
Biennial Entity Verification Document	5,750	1	5,750	.25	1,438
Entity File Update	1,150	1	1,150	.25	288

Estimated Total Annual Burden: 167,489 hours

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: Decmber 14, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination

[FR Doc. 95–30885 Filed 12–19–95; 8:45 am]

BILLING CODE 4160–15–U

National Institutes of Health

Opportunity For Licensing: Sequence Modification of Oligonucleotide Primers to Manipulate Non-Templated Nucleotide Addition

AGENCY: National Institutes of Health, Pubic Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks licensees to commercialize a method to manipulate non-templated nucleotide addition to ensure that all amplified DNA products of polymerase chain reaction (PCR) are either specifically modified or unmodified.

This technology was developed by Dr. Jeffrey R. Smith and Dr. John Carpten of the National Center for Human Genome Research and Dr. Michael Brownstein of the National Institute of Mental Health.

The invention embodied in U.S. Provisional Patent Application 60/005,761 filed October 20, 1995, entitled ''Sequence Modification of Oligonucleotide Primers to Manipulate Non-Templated Nucleotide Addition,'' is owned by an agency of the U.S.Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 or pursuant to 42 U.S.C. 241 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Requests for a summary of the technology or other questions and comments concerning the biomedical aspects of this technology should be directed to: Dr. Ronald King, National Center for Human Genome Research, 9000 Rockville Pike, Building 31, Room 3B13, Bethesda, MD 20892; Telephone: 301/402–2537; Fax 301/402–9722.

Requests for a copy of the patent application, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Carol Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301/496–7735 ext 287; Fax 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

SUPPLEMENTARY INFORMATION: Thermostable DNA polymerases are employed in PCR to amplify DNA for sizing in medical diagnostics, forensics, and genotyping, as well as for molecular cloning. Several of these enzymes, including the widely used Taq DNA polymerase, can catalyze non-templated addition of a nucleotide (predominantly adenosine) to the 3′ end of amplification products. As a result, an amplified DNA fragment may be incorrectly sized by one base pair in length and introduce error into a genotyping study. Artifactual variations in marker size may adversely impact interpretations of family relationships, medical diagnosis, and forensics. Moreover, full automation of genotyping has been hampered by the necessity of manually editing collected data to correct for allele misidentification due to the unpredictability of non-templated nucleotide addition. In addition, TA cloning methods that rely upon the modification will often fail when the amplified DNA is not modified.

In response to this problem, Drs. Smith, Carpten, and Brownstein have characterized short DNA sequences (''tails'') that may be added to the unlabeled primer of a PCR primer pair to confer modification by a thermostable DNA polymerase, or to protect from the modification. This allows uniformity in allele sizing that is essential for automated genotyping. Furthermore, this prevents introduction of error and enables high TA cloning efficiency.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have the most meritorious plan for the development of this method to meet the needs of the public and with the best terms for the NIH. The criteria that NIH will use to evaluate exclusive or non-exclusive license applications will include those set forth by 37 CFR 404.7(a)(1)(ii)–(iv).

Dated: December 8, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30935 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting Robert Benson at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 267; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Immunogenic Chimeras Comprising Nucleic Acid Sequences Encoding Endoplasmic Reticulum Signal Sequence Peptides and at Least One Other Peptide, and Their Uses in Vaccines and Disease Treatments

Nicholas P. Restifo, Steven A. Rosenberg, Jack R. Bennink, Igor Bacik, and Jonathan W. Yewdell (NCI)

Serial Number 08/032,902 filed March 17, 1993

This invention concerns the use of chimeric peptides as vaccines for the cellular immune system. One portion of the chimeric peptide, the ER signal peptide, serves to transport the chimeric

peptide from the cytoplasm to the ER. Once in the ER, the other portion of the chimeric peptide associates with class I MHC molecules and together they form a complex which is presented on the surface of the cell. The complex activates cytotoxic lymphocytes which react with the complex, leading to expansion of CTLs which kill cells presenting the particular complex. The MHC complexing portion of the chimeric peptide is taken from cancer antigens or viral antigens. Thus the invention is a broad general method of vaccination that activates the cellular immune system. DNA constructs and expression vectors encoding the chimeric peptides are also claimed. The method has been shown to work as a treatment for cancer in mice. It has been PCT filed, PCT/US94/02897.

Dated: December 8, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30936 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Health

National Institute of Allergy and Infectious Diseases; Meeting, AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 30, 1996, in the Executive Board Conference Room D of the Natcher Conference Center, Building 45, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Disease Research, National Institutes of Health).

Dated December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30933 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 8–9, 1996, convening at 9 a.m. on February 8 and at 8:30 a.m. on February 9 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 8 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. Public Law 92–463, the meeting will be closed on February 8, from 10:30 a.m. to approximately 5 p.m. and on February 9 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30932 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of the Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given to the meeting of the National Advisory Eye Council (NAEC) on January 25, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda , Maryland.

The NAEC meeting will be open to the public on January 25 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there were be presentations by staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on January 25 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health.)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30930 Filed 12–19–1995; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting of the National Deafness and Other Communication Disorders Advisory Council and Its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on January 25–26, 1996, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. Both meetings will take place as telephone conference calls originating in Conference Room 7, Building 31.

In accordance with the provisions set forth in Secs 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on January 25 will be closed to the public from 2 pm to adjournment. The meeting of the full Council will be closed to the public on January 26 from 1 pm until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Earleen F. Elkins, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from her office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30931 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: January 8–January 9, 1996.

Time: 6 p.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: William H. Radcliffe, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1000.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30934 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of General Counsel

[Docket No. FR–3950–N–03]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 20, 1996. Comments must be received within sixty (60) days from the date of this Notice.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10245, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, particularly through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Discrimination of Information Collection

Each party seeking designation as a foreclosure commissioner must submit the current information in writing (facsimiles are not acceptable), as listed below, to HUD's Field Assistant General Counsel serving the geographic area (there are ten such areas) in which the party proposes to serve as commissioner.

1. Name.
2. Business Address.
3. Geographic area in which the applicant wishes to conduct foreclosures. (List only States or areas in States in which the applicant is a resident or is duly authorized to transact business.)
4. If the applicant is not a natural person, the names and business addresses of the people who would actually perform the commissioner's duties.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities

which would qualify the applicant to serve as a foreclosure commissioner.

6. Evidence of the applicant's financial responsibility.

Note: Any party that has been designated as a foreclosure commissioner for HUD-held multifamily mortgages may submit a letter to the appropriate Field Assistant General Counsel and request designation as a single family foreclosure commissioner. This letter of interest would be acceptable in lieu of the preceding information, unless any information requires updating.

Additional Information

Title of Proposal: Notice of Application for Designation as Single Family Foreclosure Commissioner.

OMB Control Number, if applicable: Not applicable.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclosure Act of 1994 (12 USC 3751 *et seq.*), the ''Act,'' HUD will be able to foreclose on HUD-held single family mortgage loans in about two months instead of the much longer periods—ranging up to two years—currently required under some State laws. The current long periods lead to increased holding costs and vandalism on the mortgaged properties. HUD holds thousands of loans that are eligible for foreclosure. The requested information is needed for HUD's selection of foreclosure commissioners who will satisfy the statutory requirements (Section 3754(c) of the Act) to be ''responsible, financially sound, and competent to conduct a foreclosure.''

Agency form numbers, if applicable: None.

Members of affected public: Persons and other entities that want to apply to serve as foreclosure commissioners for the Department of Housing and Urban Development.

Estimation of the total numbers of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Respondents: Approximately 250 in the first year and 50 each year thereafter.

Frequency of Submission: Once for each of HUD's ten geographic areas of the country. Probably very few respondents will apply to more than one HUD geographic area.

Reporting burden	First year	Each following year
Number of respondents	250	50
Total burden hours (@ 0.5 hour per response)	125	25

Total estimated burden hours: 175 (first three years)

Status of the proposed information collection: This is a new collection.

Contact persons and telephone numbers (these are not toll-free numbers) for copies of available documents: Bruce S. Albright, Assistant General Counsel, Single Family Mortgage Division, (202) 708–0303; Evelyn M. Wrin, Attorney-Advisor, Single Family Mortgage Division, (202) 708–3082.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 8, 1995.

Nelson A. Diaz,

General Counsel.

[FR Doc. 95–30826 Filed 12–19–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3329–N–05]

Announcement of Funding Awards for Fiscal Year 1994 for Rental Vouchers Set-Aside for Homeless Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 94 to housing agencies under the Section 8 rental voucher set-aside for homeless families with disabilities. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families with disabilities who are homeless or living in transitional housing.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Rental Vouchers Set-Aside for Homeless with Disabilities funding is authorized by the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991). The recent amendment of 791.403 of 24 the Code of Federal Regulations allows for a set-aside such as this initiative for homeless persons with disabilities.

The purpose of the set-aside is to assist eligible homeless families with disabilities to pay the rent for decent, safe, and sanitary housing. The FY 94 awards announced in this notice were selected for funding in a competition announced in a Federal Register notice published on February 1, 1994 (59 FR 4758). Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $42,245,630 of budget authority for rental vouchers (1,107 units) was awarded to 10 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: December 14, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8.—RENTAL VOUCHER PROGRAM FY 1994 AWARDS FOR THE HOMELESS WITH DISABILITIES PROGRAM

Recipients	Units	Amount
New England Area:		
EOCD 100 Cambridge St., Boston, MA 02202	175	$6,905,820
HA of the City of Bridgeport, 150 Highland Avenue, Bridgeport CT 06604	40	1,978,360

APPENDIX A.—SECTION 8.—RENTAL VOUCHER PROGRAM FY 1994 AWARDS FOR THE HOMELESS WITH DISABILITIES PROGRAM—Continued

Recipients	Units	Amount
HA of the City of Waterbury, 70 Lakewood Road, Waterbury, CT 06704	25	654,185
New York/New Jersey Area:		
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202	200	4,512,440
New York City HA, 250 Broadway, New York, NY 10007	114	5,864,945
New York City DHPD, 100 Gold St., New York, NY 10038	95	3,158,045
New York State HFA % DHCR, One Fordham Plaza, Bronx NY 10458	200	10,114,875
New Jersey Dept of Comm Affairs, CN 051, Trenton, NJ 08625	170	7,112,420
Rock Mountain Area:		
CO Division of Housing, 1313 Sherman St. #323, Denver, CO 80203	63	1,488,365
HA of the County of Salt Lake, 1962 S. 200 E., Salt Lake City UT 84115	25	456,175
Total Units	1,107	$42,245,630

[FR Doc. 95–30824 Filed 12–19–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–3714–N–02]

Announcement of Funding Awards for Fiscal Year 1994 for Veterans Affairs Supportive Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 to housing agencies under the HUD-Veterans Affairs Supportive Housing (VASH) program. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to fund rental assistance for veterans under the VASH program.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The purpose of the VASH program is to provide rental assistance to veterans with severe psychiatric or substance abuse disorders. The FY 94 awards announced in this notice were made under a competition announced in a Federal Register notice published on July 14, 1994 (59 FR 36008).

A total of $18,260,990 of budget authority for rental vouchers was awarded to 19 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown on Appendix A.

Dated: December 14, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A.—Section 8 Rental Voucher Program FY 1994 Veterans Affairs Supportive Housing Funding Decisions

Recipients	Units	Amount
NEW YORK/NEW JERSEY AREA		
NEW YORK CITY HA, (BROOKLYN VAMC), 250 BROADWAY, NEW YORK, NY 10007	50	$2,032,250
NEW YORK CITY HA, (NY VAMC), 250 BROADWAY, NEW YORK, NY 10007	50	2,032,250
ALBANY HOUSING AUTHORITY, 4 LINCOLN SQUARE, ALBANY, NY 12202	25	609,625
MID-ATLANTIC AREA		
HOC OF MONTGOMERY COUNTY, 10400 DETRICK AVE, KENSINGTON, MD 20895	25	1,065,555
SOUTHEAST AREA		
HA OF THE COUNTY OF DEKALB, P. O. BOX 1627, DECATUR GA 30031	25	885,000
MIDWEST AREA		
INDIANAPOLIS HA, 410 NORTH MERIDIAN ST., INDIANAPOLIS, IN 46204	25	779,780
SOUTHWEST AREA		
HA OF FORT WORTH, P.O. BOX 430 212 BURNET ST, FT WORTH, TX 76101	25	605,225
HA OF THE CITY OF HOUSTON, P.O. BOX 2971, 2640 FOUNTAINVIEW, HOUSTON TX 77252	50	1,331,000
HA OF CITY OF NORTH LITTLE ROCK, BOX 516, 2201 DIVISION, NORTH LITTLE ROCK, AR 72115	25	529,500
HA OF JEFFERSON PARISH, 1718 BETTY ST., MARRERO, LA 70072	25	726,825
ROCKY MOUNTAINS AREA		
CO DEPT OF HUMAN SERVICES, 4131 S. JULIAN WAY, DENVER, CO 80236	50	1,221,530
HA OF THE COUNTY OF SALT LAKE, 1962 S. 200 E., SALT LAKE CITY, UT 84115	25	562,275
PACIFIC HAWAII AREA		
HA OF CITY OF LOS ANGELES (LOPAC), P.O. BOX 17157, 2600 WILSHIRE BLVD, FOY STA, LOS ANGELES, CA 90057	25	962,625
HA OF CITY OF LOS ANGELES (LAMC), P.O. BOX 17157, 2600 WILSHIRE BLVD, FOY STA, LOS ANGELES, CA 90057	30	1,155,150
HA OF COUNTY OF SAN BERNARDINO, 1053 N "D" ST., SAN BERNARDINO, CA 92410	25	670,780
NORTHWEST/ALASKA AREA		
ALASKA HOUSING FINANCE CORP, P.O. BOX 230329, 624 W. INTERNATIONAL RD., ANCHORAGE, AK 99523	25	689,775

Appendix A.—Section 8 Rental Voucher Program FY 1994 Veterans Affairs Supportive Housing Funding Decisions—Continued

Recipients	Units	Amount
PIERCE COUNTY HA, P.O. BOX 45410, 603 SOUTH POLK STREET, TACOMA, WA 98445	50	1,182,500
HA OF THE CITY OF PORTLAND, 135 SW ASH STREET, PORTLAND, OR 97204	25	582,625
HA AND COMMUNITY SERVICES, AGENCY OF LANE COUNTY, 177 DAY ISLAND ROAD, EUGENE, OR 97401	25	636,720
Total Units:	605	$18,260,990

[FR Doc. 95–30825 Filed 12–19–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–7122–00–5514; AZA 28789]

Availability of Draft Environmental Impact Statement (DEIS) for the Morenci Land Exchange, Greenlee County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The BLM has prepared a Draft Environmental Impact Statement (DEIS), analyzing the impacts to the human environment, of a proposed land exchange with the Phelps Dodge Mining Company, a Division of the Phelps Dodge Corporation, near Morenci, Arizona. The proposed exchange involves trading 3,979 acres of public land managed by the Bureau of Land Management for 1,200 acres of private land owned by the Phelps Dodge Mining Company. This DEIS (1) assesses the environmental impacts of the proposed land exchange as described in the Proposed Action, and the No Action Alternative; (2) determines if there are direct, indirect and cumulative impacts; and (3) identifies necessary mitigative measures. This DEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. at 1701, The Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. at 1716 and 1740, and BLM regulations governing land exchanges (43 CFR parts 2090 and 2200).

DATES: Written comments relating to the DEIS will be accepted until February 20, 1996. Written or oral comments may also be presented at the four public open houses to be held:

January 23, 1996—4:00 p.m. to 8:00 p.m., Greenlee County Offices, 4th Street and Leonard Avenue, Clifton, Arizona

January 24, 1996—4:00 p.m. to 8:00 p.m., Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona

January 30, 1996—4:00 p.m. to 8:00 p.m., Main Public Library, 101 North Stone Avenue, Tucson, Arizona

February 1, 1996—4:00 p.m. to 8:00 p.m., Bureau of Land Management, Arizona State Office (2nd floor conference room) 3707 North 7th Street, Phoenix, Arizona

ADDRESSES: Send written comments to the Bureau of Land Management, Safford District Office, Attention: Scott Evans, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The Public Lands proposed for exchange include 17 small parcels, under 1 acre, surrounded by private property and 12 larger parcels, 5 to 2,560 acres, adjacent to the existing Phelps Dodge Morenci mining operation. Phelps Dodge wishes to acquire these lands to continue and expand their existing mining operation. More than 90 percent of the public lands proposed for exchange are encumbered by mining claims held by Phelps Dodge Corporation and others. The private lands offered for exchange include high resource value inholdings within the Gila Box Riparian National Conservation Area and the Cienega Creek Long-Term Management Area as well as two parcels adjacent to the Dos Cabezas Mountains Wilderness Area.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, Mike McQueen, NEPA Compliance Officer, at BLM, Safford District Office, telephone (520) 428–4040 or Tina Lee, Project Manager, at SWCA, Inc., telephone (520) 325–9194.

Dated: December 13, 1995.

Frank Rowley,

Acting District Manager.

[FR Doc. 95–30738 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–32–M

[OR–130–1020–00; GP6–045]

Notice of Meeting of Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council; Spokane, Washington; January 16, 1996.

SUMMARY: A meeting of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council will be held on January 16, 1996, at the Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212. The meeting will convene at 9:00 a.m. and adjourn upon completion of business. At an appropriate time, the Council meeting will recess for approximately one hour for lunch. Public comments will be received from 10:00 a.m. to 10:15 a.m. The topic of the meeting is to review background information related to the Interior Columbia Basin Ecosystem Management Project.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated December 14, 1995.

Joseph K. Buesing,

District Manager.

[FR Doc. 95–30877 Filed 12–19–95; 8:45pm]

BILLING CODE 4310–33–P

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 19 N., R. 105 W., accepted December 12, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 12, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–30898 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 9, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 4, 1996.

Carol D. Shull,

Keeper of the National Register.

California

Kern County

Weedpatch Camp, 8305 Sunset Blvd., Bakersfield vicinity, 95001554

San Francisco County

Saint John's Presbyterian Church, 25 Lake St. and 201 Arguello Blvd., San Francisco, 95001555

Georgia

Jenkins County

Carswell Grove Baptist Church and Cemetery, Big Buckhead Rd. off US 25/GA 21, Perkins vicinity, 95001564

Kansas

Marion County

Morgan, W. H., House, 21 North Walnut, Peabody, 95001562 Wyandotte County

Lake of the Forest Historic District, Address Restricted, Bonner Springs vicinity, 95001553

Kentucky

Jefferson County

Hope Worsted Mills (Textile Mills of Louisville TR) 942 E. Kentucky St., Louisville, 95001543

Louisiana

Iberia Parish

Taylor, John R., Drugstore, 145 W. Main St., New Iberia, 95001563

North Fork Road (Glacier National Park MPS), North Fork drainage, Fish Creek to Kintla Lake, Glacier NP, West Glacier, 95001572

Polebridge to Numa Ridge Phoneline (Glacier National Park MPS) North Fork drainage, Polebridge to Numa Ridge, Glacier NP, West Glacier, 95001573 West Entrance Station (Glacier National Park MPS), Going-to-the-Sun Rd., near West Glacier, Glacier NP, West Glacier, 95001581

Glacier County

Cut Bank Ranger Station Historic District (Glacier National Park MPS) N side Cut Bank Creek, Glacier NP, East Glacier, 95001566 Glacier National Park Tourist Trail—Inside Trail, South Circle, North Circle (Glacier National Park MPS), Inside Trail, South Circle and North Circle Trails, St. Mary, 95001579

Goathaunt Bunkhouse (Glacier National Park MPS), S end of Waterton Lake, Glacier NP, St. Mary, 95001568

Many Glacier Barn and Bunkhouse (Glacier National Park MPS), Glacier Rt. 3 at Apikuni Flat, Glacier NP, St. Mary, 95001570

Many Glacier Campground Camptender's Cabin (Glacier National Park MPS), Many Glacier, Glacier NP, St. Mary, 95001571

Rising Sun Auto Camp (Glacier National Park MPS), 500 ft. N of Going-to-the-Sun Rd. at St. Mary Lake, Glacier NP, St. Mary, 95001574

Roes Creek Campground Camptender's Cabin (Glacier National Park MPS), N of Going-to-the-Sun Rd. at St. Mary Lake, Glacier NP, St. Mary, 95001575

St. Mary Utility Area Historic District (Glacier National Park MPS), E of St. Mary at Divide Creek, Glacier NP, St. Mary, 95001576

Swanson Boathouse (Glacier National Park MPS), E shore of Two Medicine Lake, Glacier NP, East Glacier, 95001577

Swiftcurrent Auto Camp Historic District (Glacier National Park MPS), W end of Glacier Rt. 3, Glacier NP, Many Glacier, 95001578

Two Medicine Campground Camptender's Cabin (Glacier National Park MPS), Two Medicine Lake, Glacier NP, East Glacier, 95001580

New York

New York County

Metropolitan Life Home Office Complex, Roughly bounded by Madison Ave., E. 23rd St., Park Ave. S. and E. 25th St., New York, 95001544

Yates County

Crooked Lake Outlet Historic District (Yates County MPS), Along the Keuka Lake Outlet Trail, from Penn Yan to Dresden, Penn Yan, 95001545

North Dakota

Morton County

State Training School Historic District, Heart R., W bank, 0.5 mi. S of W. Main St., on W edge of Mandan, Mandan vicinity, 95001549

Sunnyside Farm Barn, Approximately 1.7 mi. W of Mandan, 0.5 mi. S of W. Main St. on S side of Dead Heart Slough, Mandan vicinity, 95001550

Texas

Orange County

Woodmen of the World Lodge—Phoenix Camp No. 32, 110 Border St., Orange, 95001551

Vermont

Washington County

McLaughlin Farm (Agricultural Resources of Vermont MPS), Town Hwy. 17 (Bragg Hill Rd.), Fayston, 95001556

Virginia

Augusta County

Long Glade Farm, VA 607, S of jct. with VA 741, Mount Solon vicinity, 95001560

Halifax County

Brooklyn Store and Post Office, VA 659 N side, 0.1 mi. W of jct. with VA 820, Brooklyn, 95001557

Brooklyn Tobacco Factory, VA 650 N side, 0.25 mi. E of jct. with VA 820, Brooklyn, 95001559

Lunenburg County

Victoria High School, Jct. of Eighth St. and Lee Ave., Victoria, 95001561

Salem Independent City

Southwest Virginia Holiness Association Camp Meeting, 202 and 208 E. Third St., Salem (Independent City), 95001558

Wisconsin

Winnebago County

Doty Island Village Site, Address Restricted, Neenah, 95001552

[FR Doc. 95–30893 Filed 12–19–95; 8:45pm]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–731 (Final)]

Bicycles From China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–731 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of bicycles,[1] provided for in subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of bicycles from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 5, 1995, by Huffy Bicycle Co., Dayton, OH; Murray Ohio Manufacturing Co., Brentwood, TN; and Roadmaster Corp., Olney, IL.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 20, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 2, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 25, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 28, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is March 27, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 8, 1996;

[1] For purposes of this investigation, bicycles are defined as bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. The term ''unassembled'' means fully or partially unassembled or disassembled; the term ''incomplete'' means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and the term ''unfinished'' means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components, whether or not assembled together with the frame and/or fork: (a) the rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin. Incomplete bicycles may be classified for tariff purposes under any of the above-mentioned HTSUS subheadings covering complete bicycles or under HTS subheadings 8714.91.20 through 8714.99.80, inclusive (covering various bicycle parts). The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 8, 1996. On April 26, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 1, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: December 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30941 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

Notice of Closure of Commission Offices Due to Furlough

AGENCY: International Trade Commission.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Friday, December 22, 1995, because agency personnel will be on furlough. All filings due on that date will be due on Tuesday, December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 15, 1995.

By order of the Chairman:

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30942 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

Notice of Closure of Commission Offices Due to Furlough

AGENCY: International Trade Commission.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Friday, December 29, 1995, because agency personnel will be on furlough. All filings due on that date will be due on Tuesday, January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 15, 1995.

By order of the Chairman:

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30943 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (96–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a first quarter 1996 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.066. The first quarter RCAF (Adjusted) is 0.782, a decrease of 2.6% from the fourth quarter 1995 RCAF (Adjusted). Maximum first quarter 1996 RCAF rate levels may not exceed 97.4% of maximum fourth quarter 1995 rate levels.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30770 Filed 12–19–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32816]

Hennepin County Regional Railroad Authority—Exemption—From 49 U.S.C. Subtitle IV [1]

SUMMARY: On our own motion the Interstate Commerce Commission exempts the Hennepin County Regional Railroad Authority from the requirements of 49 U.S.C. Subtitle IV in connection with its acquisition of 2.5 miles of railroad from the Chicago and North Western Railway Company.

DATES: This exemption will be effective January 19, 1996. Petitions to stay must be filed by January 4, 1996. Petitions for reconsideration must be filed by January 16, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32816 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[2] 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2)

[1] This proceeding is embraced in Chicago and North Western Transportation Company Abandonment and Discontinuance of Service Exemption In Hennepin County, MN, Docket No. AB–1 (Sub-No. 252X).

[2] Legislation to sunset the Commmission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

Petitioner's representative: Byron D. Olsen, 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402–4302.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: December 6, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30939 Filed 12–19–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

In accordance with Department of Justice Policy, 28 C.F.R. § 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on November 30, 1995, a proposed amendment to a Consent Decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Simpson Tacoma Kraft Co.*, Civil Action No. C91–5260TC. The proposed amendment to the Consent Decree, Amendment No. 1, settles claims asserted by federal, state, and tribal natural resources trustees against the Settling Defendants for damages to natural resources in the Commencement Bay Environment. The trustees for natural resources in Commencement Bay are the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) (the federal trustees); the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe. The Settling Defendants involved in Amendment No. 1 to the decree are Simpson Tacoma Kraft Company (Simpson) and Champion International Corporation (Champion). The Washington State Department of Natural Resources (DNR), which was a party to the original consent decree, is not involved in the settlement set forth in Amendment No. 1 to the decree.

Under the original consent decree, entered by the Court on December 13, 1991, the natural resource trustees for the Commencement Bay Nearshore/Tideflats Superfund Site (CB N/T Site) settled claims for natural resource damages in the St. Paul Waterway Problem Area, one subpart of the CB N/T Site against Simpson, Champion, and DNR. Amendment No. 1 extends the natural resource damages settlement with Simpson and Champion to encompass the Commencement Bay Environment, which consists of the CB N/T Site plus areas of Commencement Bay between the Site and a line drawn from Point Defiance to Dash Point, points at either side of the mouth of the Bay.

Under the Amendment to the Consent Decree, the Settling Defendants will pay for most of the costs associated with a habitat restoration project (the Restoration Project) in the Middle Waterway in the CB N/T Site. Simpson has provided a 3.3 acre piece of property along the Middle Waterway for the Restoration Project, and will construct the Restoration Project. Simpson will also pay all but $275,000 of the costs of constructing, monitoring, and maintaining the Restoration Project. In addition, Simpson and Champion will reimburse $75,000 of the Trustee assessment costs for the Site. The total value of the settlement under Amendment No. 1 is approximately $1 million.

In return for the commitments made by Simpson and Champion in the Consent Decree Amendment, the United States, the State of Washington, and the Indian Tribe co-trustees are providing a covenant not to sue the companies for damages to natural resources with respect to the Commencement Bay Environment. Specifically, the Trustees are providing a covenant not to sue for claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607; Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321; Chapters 70.105d and 90.48 of the Revised Code of Washington (the State of Washington's Model Toxics Control Act and the state water pollution control statute); and claims under any other federal, state, tribal, or common law for damages for injury to, destruction of, or loss of natural resources, and claims for recovery of Past Response Costs, Oversight Response Costs, and Future Response Costs incurred by the Natural Resource Trustees with respect to the Commencement Bay Environment.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States*v. *Simpson Tacoma Kraft Co.*, D.J. Ref. No. 90–11–3–363.

The proposed Amendment No. 1 to the Consent Decree and exhibits to the amendment may be examined at the following locations: the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Ruston/North Tacoma Study Area may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of Amendment No. 1 and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $6.75 (without exhibits) or $48.50 (with exhibits) (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30846 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Crash Avoidance Metrics Partnership

Notice is hereby given that, on July 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Crash Avoidance Metrics Partnership has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under

specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: General Motors Corporation, Detroit, MI; and Ford Motor Company, Dearborn, MI. The purpose of this partnership is to identify opportunities for joining aspects of their independent research and development efforts in procedures for measurement of collision warning/avoidance system performance, functions and operating characteristics. The objectives are to avoid inefficient duplication effort and expense in research in this area, improve general scientific knowledge, and accelerate the development of technologies in this area in order to maximize the benefits and effectiveness of future crash avoidance systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30847 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on August 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Storage Industry Consortium (''NSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the identities of the new members of NSIC are: Commonwealth Scientific Corporation, Alexandria, VA; Headway Technologies, Milpitas, CA; KLA Instruments, San Jose, CA; Optitek, Mountain View, CA; Rochester Photonics, Rochester, NY; Saint-Gobain/Norton Industrial Ceramics Corporation, Northboro, MA; Stormedia, Inc., Santa Clara, CA; Veeco Instruments, Inc., Plainview, NY; and Western Digital, Irvine, CA.

The following member companies have changed their names: SDL, Inc. was formerly known as Spectra Diode Corporation, and Terabank Systems was formerly known as Virtual Storage Systems.

NSIC's area of activity remains the sponsorship of research in the area of information storage technology.

On June 12, 1991, NSIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on July 26, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on April 13, 1995 (60 FR 18858).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30849 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 94–06

Notice hereby given that, on November 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the members of the Petroleum Environmental Research Forum participating in Project No. 94–06 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members: Unocal Corporation, Brea, CA; and Gas Research Institute, Chicago, IL.

No other changes have been made in either the membership or planned activities of PERF Project No. 94–06.

On March 20, 1995, PERF Project No. 94–06 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on April 27, 1995, (60 FR 20750).

Information regarding participation in Project No. 94–06 may be obtained from Mr. P. W. Becker, Exxon Research & Engineering Company, Florham Park, NJ.

Constance K. Robinson,

Director Operations, Antitrust Division.

[FR Doc. 95–30850 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

[Project No. 93–09]

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on August 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), participants in Petroleum Environmental Research Forum (PERF) Project No. 93–09, BTEX Removal From Contaminated Water Using Tailored Zeolites, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Oil Company, Naperville, IL; Mobil R & D Corporation, Paulsboro, NJ; Union Oil Company of California, Brea, CA; Elf Aquitaine, Paris, La Pefeure, FRANCE; and Texaco, Inc., EPTD, Bellaire, TX. The nature and objectives of this venture are to establish a joint effort to identify and describe appropriate methods for benzene, toluene, ethylbenzene and xylene (''BTEX'') removal from contaminated water using tailored zeolites.

Participation in this project will remain open until termination of the Agreement for Project No. 93–09, and the participants intend to file additional written notifications disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Union Oil Company of California, 376 S. Valencia Avenue, Brea, California 92621, Attention Dr. M.H. Ghandehari.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30851 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on November 2, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting

members of POSC: Energy and Minerals, Victoria Fitzroy, Victoria, AUSTRALIA; Beijing Research Institute of Petroleum, Beijing, PEOPLES REPUBLIC OF CHINA; and Matra Datavision, Les Ulis Cedex, FRANCE.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on July 17, 1995. A notice was published in the Federal Register pursuant to section 6(b) of the Act on November 28, 1995 (60 FR 58643).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30848 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Correction

AGENCY: Employment Standards Administration, Labor.

SUMMARY: In notice document 95–29334 beginning on page 61712 in the issue of Friday, December 1, 1995, make the following correction.

On page 61713, right hand column, the OMB clearance number for forms WH–2, WH–205, WH–226–MIS, and WH–226A–MIS is listed as 1215–0158. This should be changed to 1215–0005.

Dated: December 14, 1995.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 95–30946 Filed 12–19–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions throughout calendar year 1996, subject to availability of funds. Application procedures for qualified low-income credit unions are set forth in Part 705, NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 1996.

FOR FURTHER INFORMATION CONTACT: The Office of Community Development Credit Unions at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities which result in increased income, ownership and employment. The Program makes available low interest loans and deposits in amounts up to $300,000 to qualified participating ''low-income'' credit unions. Program participation is limited to existing credit unions with an official ''low-income'' designation.

This notice is published pursuant to Part 705.9 of the NCUA Rules and Regulations which states that NCUA will provide notice in the Federal Register when funds in the program are available.

By the National Credit Union Administration Board on December 14, 1995.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 95–30937 Filed 12–19–95; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. Part 110]

In the Matter of Holders of Specific Licenses Authorizing Exports of Utilization Facilities and Source or Special Nuclear Materials to Euratom; Order Suspending Licenses

Effective January 1, 1996.

I

The licensees that are subject to this order hold specific licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Sections 53, 54a, 57, 64, 82, 103, 104 of the Atomic Energy Act of 1954, as amended (AEA) and 10 CFR part 110. These specific licenses authorize exports to EURATOM of utilization facilities, special nuclear materials, and source materials for nuclear and uses under the terms of an Agreement for Cooperation between the U.S. and EURATOM.

II

The current U.S.-EURATOM Agreement for Cooperation will expire on December 31, 1995. A new Agreement has been approved by authorities on both sides, but must sit before Congress for review for up to 90 days of continuous legislative session. Under Section 123 of the AEA, the NRC is prohibited from authorizing any exports to a foreign nation pursuant to Section 53, 54a, 57, 64, 82, 103 or 104 of the AEA in the absence of an Agreement for Cooperation between the U.S. and the foreign nation.

III

Accordingly, pursuant to Sections 123, 161b, 161i, 183, and 186 of the AEA, and 10 CFR 110.50(a)(1) and (2) and 110.52, from January 1, 1996 until such time that a new U.S.-EURATOM agreement comes into force,[1] NRC specific license authorization for nuclear exports to EURATOM under Sections 53, 54a, 57, 64, 82, 103, 104 of the AEA is suspended.[2] This suspension order expires by operation of law when a new Agreement for Cooperation between the U.S. and EURATOM comes into force and necessary assurances form EURATOM are received.

Dated: at Rockville, Maryland this 14th day of December, 1995.

For the Nuclear Regulatory Commission.

Carlton R. Stoiber,

Director, Office of International Programs.

[FR Doc. 95–30889 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–M

[1] The EURATOM Member States are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Licensees holding free-standing licenses to Finland, Spain, or Sweden may continue direct exports to these countries because they had concluded bilateral Agreements with the U.S. before joining EURATOM. Such Agreements will remain valid until a new U.S.-EURATOM Agreement comes into force.

[2] In accordance with 10 CFR 110.52(c), the Commission finds that licensees need not be afforded an opportunity to reply and be heard since this action is required by operation of law and the common defense and security.

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 27, 1995, through December 8, 1995. The last biweekly notice was published on December 6, 1995 (60 FR 62485).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 19, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 7, 1995

Description of amendments request: The proposed amendment would adopt the improved Standard Technical Specifications (NUREG-1432) format and content of Section 5.0, ''Design Features,'' as modified by approved changes to the improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Proposed amendment does not change the Design Features, only relocates the information to other documents. This is consistent with the NRC Policy Statement and NUREG-1432. Therefore, relocating existing information, eliminating information which duplicates information found in other licensee documents, and making administrative improvements provide Technical Specifications which are easier to use. Because information is relocated to established programs where changes to those programs are controlled by regulatory requirements, there is no reduction in commitment and adequate control is still maintained. Likewise, the elimination of information which duplicates information in other licensee documents, enhances the useability of the Technical Specifications without reducing commitments. The administrative improvements being proposed neither add nor delete requirements, but merely clarify and improve the understanding and readability of the Technical Specifications. Since the requirements remain the same, these changes only affect the method of presentation and are considered administrative, and as such, would not affect possible initiating events for accidents previously evaluated or any system functional requirement.

Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of existing requirements, the elimination of requirements which duplicate existing information, and making administrative improvements are all changes that are administrative in nature. The proposed changes will not affect any plant system or structure, nor will they affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. The proposed changes are consistent with the improved Standard Technical Specifications, for the most part, as plant specific information is included in this section. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that no change[s] to the design features of the facility are being made. The Design Features Section is being reformatted to be consistent, for the most part, with NUREG-1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' Revision 1. The proposed changes do not affect the UFSAR design bases, accident assumptions, or Technical Specification Bases. In addition, the proposed changes do not affect release limits, monitoring equipment, or practices. Consequently, the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 20, 1995

Description of amendment request: The proposed amendment would revise the Electrical Power Systems Surveillance Intervals from 18 months to once per refueling (i.e., nominal 24 months).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented

below. The no significant hazards consideration analysis has been divided into three parts: AC Sources Operating, DC Sources Operating, and On-Site Power distribution:

In accordance with 10CFR50.92, CYAPCO has reviewed the proposed changes and concluded that they do not involve an SHC. The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

AC Sources Operating

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the interval between a surveillance that is performed during plant shutdown from once per 18 months to a maximum of once per 30 months (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2). The proposed change to Surveillance Requirement 4.8.1.1.2.f does not alter the intent or the method by which the surveillance is conducted. In addition, the acceptance criterion for the surveillance is unchanged. As such, the proposed change will not degrade the ability of the EDG [emergency diesel generator] to perform its intended function.

A review of the past surveillances, and preventive maintenance of the diesel generators indicates that the appropriate acceptance criterion was met in each case. Additional assurance of the diesel generator's operability is provided by Surveillance Requirement 4.8.1.1.2.a.4 and the performance of other on-line testing as described above. As such, the proposed changes do not adversely affect the probability of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

The proposed change regarding the testing frequency of the diesel generators [i.e., from once per 18 months to a maximum of once per 30 months (i.e., 24 months + 25 percent as allowed by Specification 4.0.2)] does not affect the operation or response of any plant equipment, including the diesel generators, or introduce any new failure mechanism. The proposed change does not affect the test acceptance criteria of the EDGs. The plant equipment will respond per design and analyses, and there will not be a malfunction of a new or different type introduced by the testing frequency revision to the EDG surveillance requirements. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The Bases Section of Technical Specification Section 3/4.8, ''Electrical Power Systems,'' states that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety-related equipment required for safe shutdown and mitigation and control of accident conditions. Bases Section 3/4.8 also states that the surveillance requirements for determining the operability of the EDGs are in accordance with the recommendations of Regulatory Guide 1.108, Revision 1. The revision of surveillance requirements will continue to verify that the EDGs are operable. Operable EDGs ensure that the assumptions in the Bases of the Technical Specifications are not affected and ensure that the margin of safety is not reduced. Therefore, the assumptions in the Bases of the Technical Specifications are not affected and the change does not result in a significant reduction in the margin of safety.

DC Sources Operating

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. These surveillance requirements verify the operability of components of the Class 1E DC power system. CYAPCO is also proposing to delete the term ''during shutdown'' contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f.

Additional assurance of the operability of the Class 1E DC power system is provided by Surveillance Requirements 4.8.2.1.a, b, and e.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes in the frequency of Surveillance Requirements 4.8.2.1.c, d, and f will not degrade the ability of the Class 1E DC power system to perform its intended safety function. Also, the Class 1E DC power system is designed to perform its intended safety function even in the event of a single failure.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirements 4.8.2.1.c, d and f. cThis evaluation included a review of surveillance results, preventive maintenance associated with normal surveillance activities, and corrective maintenance records. It concluded that the Class 1E DC power system is highly reliable, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject Class 1E DC power system components.

The deletion of the phrase ''during shutdown'' in Surveillance Requirement 4.8.2.1.d, e, and f is acceptable. The terms ''Cold Shutdown'' and ''Hot Shutdown'' are defined in the Haddam Neck Plant Technical Specifications as operating modes or conditions. The proposed deletion of the term ''during shutdown'' is intended to prevent possible misinterpretations and is consistent with the recommendations of GL 91-04.

Based on the above, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. CYAPCO is also proposing to delete the term ''during shutdown'' contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f. These surveillance requirements verify the operability of components of the Class 1E DC power system.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f will not introduce a new failure mode.

Based on the above, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. CYAPCO is also proposing to delete the term ''during shutdown'' contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f. These surveillance requirements verify the operability of components of the Class 1E DC power system.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirements 4.8.2.1.c, d and f. This evaluation included a review of surveillance results, preventive maintenance associated with normal surveillance activities, and corrective maintenance records. It concluded that the Class 1E DC power system is highly reliable, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject Class 1E DC power system components.

Additional assurance of the operability of the Class 1E DC power system is provided by Surveillance Requirements 4.8.2.1.a, b, and e.

Since decreasing the surveillance frequency does not involve a significant increase in the consequences of a design basis accident previously analyzed, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications do not involve a significant reduction in the margin of safety.

On-Site Power Distribution

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.8.3.1.2 will increase the surveillance interval from once each refueling outage (once per 18 months) to a maximum of once per 30 months (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2.). The proposed change to Surveillance Requirement 4.8.3.1.2 does not alter the intent or the method by which the surveillance is conducted. In addition, the acceptance criterion for the surveillance is unchanged. As such, the proposed changes will not degrade the ability of the MCC-5 ABT scheme to perform its intended function.

The successful past surveillance results, and the simpler re-design of the MCC-5 ABT provide assurance of system operability up to a maximum of 30 months. As such, the proposed changes do not adversely affect the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to Surveillance Requirement 4.8.3.1.2 will not introduce a new failure mode.

Based on the above, the proposed change to Surveillance Requirement 4.8.3.1.3 of the Haddam Neck Plant Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to Surveillance Requirement 4.8.3.1.2 extends the frequency for verifying the operability of the MCC-5 ABT scheme from at least once per 18 months to at least once per refueling interval (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2).

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.8.3.1.2 will not degrade the ability of the MCC-5 ABT to perform its safety function and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment will revise Technical Specification (TS) Section 3.6.3, ''Containment Isolation Valves.'' These changes will clarify the action statement for when a penetration has only one containment isolation valve (CIV) and that valve is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

...The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment isolation system is an engineered safety feature that functions to allow normal or emergency passage of fluids through the containment boundary, while preserving the ability of the boundary to prevent or limit the escape of fission products that may result from postulated accidents.

All fluid system pipelines that penetrate the containment are provided with one or more valves that can be closed remotely, either electrically or pneumatically, or are locked manual valves. Most of the piping penetrations connect to equipment inside the reactor containment. Thus, they are not open to the reactor containment atmosphere and will not pass radioactive contamination to the CIV unless the pipe is ruptured inside containment during an accident.

Lines that penetrate the reactor containment and are not in service during operation are isolated with one or more locked closed CIVs. Lines that are in service and that pass fluids during operation are provided with one or more motor-operated valves, positive closure trip valves, or check-valves.

The lack of guidance contained in Technical Specification Section 3.6.3 for a penetration that has only one CIV in it, does not increase the probability or consequences of an accident previously evaluated. This design, and the consequences that could result from this configuration have been evaluated previously and found acceptable. The proposed modification simply provides guidance to the operators should a penetration with only one CIV becomes inoperable. This proposed technical specification will, as do other technical specification action statements, provide a reasonable time to correct the situation before a required shutdown must commence. In addition, this proposed Action Statement was developed to be consistent with Technical Specification Section 3.0.3.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification provides guidance to the operators should a penetration which has only one CIV be inoperable. This design has been previously evaluated and found to be acceptable from both a deterministic and probabilistic standpoint. The proposed modification will provide the operators specific guidance to restore the penetration to an operable state or to isolate it. With this guidance, they can avert the risk associated with a plant shutdown, which would be mandated without this guidance. Should a CIV be inoperable and not capable of being restored, the proposed technical specification provides additional options. However, a probabilistic risk assessment review has determined that these additional options are not risk significant. Finally, the containment isolation system cannot be an accident initiator, rather it is designed to respond to accidents. The inability of the CIVs to operate cannot create a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed modification provides the requirement to the operators should a penetration which has only one CIV be inoperable. The effects of this design have been previously evaluated and found to be acceptable from both a deterministic and probabilistic standpoint.

The current Haddam Neck Plant containment isolation system has been previously reviewed by the NRC. CYAPCO is not making any changes to the containment isolation system. CYAPCO is however, providing guidance in the technical specifications should a penetration which has only one CIV be inoperable. This guidance will allow CYAPCO to correct the event associated with the penetration with an NRC approved alternative, in a set time. This provision is safe especially when compared to the alternative which is a plant shutdown under Technical Specification Section 3.0.3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 17, 1995

Description of amendment request: The Commission issued Amendment Nos. 128 and 122 to the Facility Operating Licenses for Catawba Units 1 and 2 on February 17, 1995, which revised Technical Specification (TS) Table 2.2-1 and TS Surveillance Requirement (SR) 4.2.5 to allow a change in the method for measuring reactor coolant system (RCS) flowrate from the calorimetric heat balance method to a method based on a one-time calibration of the RCS cold leg elbow differential pressure taps. In its application submitted on January 10, 1994, for the above listed amendments, Duke Power (the licensee) neglected to modify SR 4.2.5.2 to delete that portion of the SR that specifies that the measurement instrumentation shall be calibrated within 7 days prior to the performance of the flowrate measurement. The licensee states that the requirement to calibrate the measurement instrumentation within 7 days prior to the performance of the flowrate measurement is impractical based on utilization of the cold leg elbow pressure tap method of RCS flowrate measurement. Accordingly, the licensee proposes to modify SR 4.2.5.2 to reflect the deletion of the subject requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is considered administrative in nature and should have been requested in Duke Power Company's January 10, 1994 application, as amended. The instrumentation which was subject to the requirement is no longer utilized in the fulfillment of the TS required RCS flowrate determination. The proposed changes will not result in any impact upon accident probabilities, since the RCS flowrate measurement instrumentation is not accident initiating equipment. Likewise, they will not result in any impact upon accident consequences, since no change to any method or frequency of calibration of the RCS flowrate transmitters will result. The plant response to accidents will not be affected.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No change is being made to any plant design feature, or to the manner in which the plant will be operated. Therefore, no new accident causal mechanisms can be generated. As noted above, the proposed changes are considered administrative in nature, and should have been requested in the January 10, 1994 application, as amended.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any fission product barriers will occur as a result of the approval of the proposed changes. No change to plant design, operating, maintenance, or test characteristics will result from the proposed amendments. No impact upon any plant safety margins will result.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 15, 1995

Description of amendment request: The proposed amendments modify Technical Specification (TS) 3/4.7.1 and the associated Bases to increase the setpoint tolerance of the main steam safety valves (MSSVs) from plus or minus one percent to plus or minus three percent, to incorporate a requirement to reset as-left MSSV lift settings to within plus or minus one percent following surveillance testing, and to delete two obsolete footnotes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. As demonstrated previously, all applicable licensing basis safety analyses were evaluated with a MSSV setpoint drift of plus or minus 3%. The results of the evaluations were within all appropriate accident analysis acceptance criteria. No significant impact on DNBR results, peak primary or secondary pressures, peak fuel cladding temperature, dose, or any other accident analysis acceptance criterion was involved. No impact on the probability of any accident occurring exists as a result of the increased MSSV setpoint tolerance.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No change is being made to any plant design feature, or to the manner in which the plant will be operated. Therefore, no new accident causal mechanisms can be generated. The MSSV setpoint tolerance only affects the time at which the valve opens following or during a transient, and is not a contributor to the probability of an accident.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. As stated above, all relevant accident analyses were examined to determine the effect of the wider MSSV setpoint tolerances. All analysis results are within applicable acceptance criteria. Finally, the NRC has previously approved TS changes for other plants seeking to use the [plus or minus] 3 [percent] setpoint tolerance, including McGuire Nuclear Station (reference Amendment Nos. 146 and 128 for Units 1 and 2, respectively).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 15, 1995

Description of amendment request: The proposed amendments modify Technical Specification (TS) Limiting Condition for Operation 3.7.5 to raise the minimum nuclear service water system's (RN) water level in the standby nuclear service water pond (SNSWP) from 570 to 571 feet mean sea level.

This change will increase the volume of water that will be available for use of the SNSWP as the ultimate heat sink for postulated accidents under all meteorological conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probabililty or consequences of an accident previously evaluated. The proposed amendments will have no impact upon any accident probabilities, since the RN system is not a accident initiating system. It is an accident mitigating system. Accident consequences will not be affected, since the proposed amendments will require a greater surface area for heat transfer from the SNSWP water to the environment. It has been determined that with the required TS minimum water level of 571 feet and with the required TS temperature limit of 91.5F [degrees Farenheit], the SNSWP will be capable of fulfilling all design basis requirements pertaining to accident mitigation.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated previously, the RN system is not an accident initiator. No change is being made to the plant which would cause the RN system to become an accident initiator. All relevant procedures will be changed as required, commensurate with the NRC issuance of the requested amendments. No accident causal mechanisms will be affected. The effect of the increased SNSWP level on the SNSWP dam was evaluated and found to be negligible.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. As noted above, the SNSWP was evaluatd with the new TS level requirement and was determined to be operable and capable of meeting all design basis requirements. No impact on any fission product barriers is created by the proposed changes. The proposed changes will ensure that the RN system remains capable of fulfilling its required accident mitigating functions. SNSWP temperature will continue to be monitored at an elevation of 568 feet, which is considered to be the highest elevation at which the average SNSWP surface temperature is accurately represented and minimally influenced by daily temperature swings due to variations in solar heat input, air temperature, and rainfall temperature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 20, 1992, as supplemented December 5, 1995.

Description of amendment request: The proposed amendments, would revise the Technical Specifications (TS) related to the 60-month 120-volt battery surveillance requirement. The proposed change is to delete the words ''during shutdown'' from SR 4.8.2.1.2.e (performance discharge test). The licensee contends that the ''during shutdown'' provision in the TS is an impractical requirement because both units would have to be shutdown to perform the performance discharge test (PDT).

In the licensee's supplement dated December 5, 1995, proposed changes were made to TS 3/4 8.2 Bases to support the frequency of the PDT on the other batteries in the system after a battery that had its PDT performed is returned to service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment seeks to change the surveillance requirements to allow the performance with the units on line. The surveillance can be safely completed as proposed without affecting unit operation. The equipment would not be removed from service for a time that would exceed the current allowed outage time. The probability or consequences of any accident previously evaluated will not be increased because the removal of a battery from service can be performed while on line, and the loads of each battery can be assumed by another same-train battery which is the case for the battery being inoperable for any other reason. During the allowed outage time, even a single failure of any component (including Emergency Diesel Generator) will still leave a full capacity train available to provide instrumentation and control power for both units. Train redundancy is maintained at all times. Compensatory action is taken to prohibit discharge testing of the other remaining batteries within 10 days following a battery performance discharge test to ensure that the tested battery is fully recharged. Probabilistic Risk Analysis shows that the increase in Core Damage Frequency due to this operation is negligible.

2. The proposed amendment will not change any actual surveillance requirements, the change would simply allow the requirements to be met at different unit conditions. The performance of the surveillance with the units on line does not require any new component configurations that would reduce the ability of any equipment to mitigate an accident. The station would not be in any degraded status beyond that which has previously been evaluated. Therefore the proposed change will not create the possibility of a new accident.

3. The change would allow a battery to be removed from service for testing. However, the testing must be completed within the current allowed outage time. As the allowed outage time defines the required margin of safety for equipment operability, removing equipment from service for testing and returning it to service within the allowed time does not affect a margin of safety. Compensatory action is taken to prohibit discharge testing of the other remaining batteries within 10 days following a battery performance discharge test to ensure that the tested battery is fully recharged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: November 6, 1995

Description of amendment request: The proposed amendment would revise the alarm setpoints for the noble gas and in-containment high range area radiation monitors listed in Table 3.3-6 of Beaver Valley Power Station, Unit 1 Technical Specification (TS) 3.3.3.1. The proposed revisions would make these alarm setpoints consistent with the criteria in the Emergency Action Levels (EALs) which were revised and

approved by the NRC in August 1994. The revised EALs use the noble gas radiation monitors as indications of effluent releases and are based on dose to the public. The revised EALs use the in-containment high range area radiation monitors as indication of fission product barrier challenges or failures rather than as indications of effluent release.

The proposed amendment would also revise Action Statement 36 of Table 3.3-6 of TS 3.3.3.1 for both BVPS-1 and BVPS-2 to reflect a previously approved change in reporting frequency for effluent releases. BVPS-1 License Amendment No. 188 and BVPS-2 License Amendment No. 70 (both issued on June 12, 1995) approved a change in the reporting frequency for effluent releases from semi-annual to annual. The proposed change would make Action Statement 36 consistent with this previously approved change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed monitor alarm setpoint changes and editorial changes are administrative in nature. Should the radiation alarm fail to annunciate or give a false alarm, there would be no affect on any other plant equipment or systems. The noble gas monitors are not safety related and do not interface with any safety related system. The containment area monitors are safety related; however, they do not initiate any safety function, nor do they interface with any other safety related system.

The monitors' alarm as a visual (lighted icon) and audible alarm in the control room. The operator is then responsible for taking any corrective actions necessary, based on the alarm and Emergency Action Level (EAL) guidelines. The monitors do not provide for any automatic actions of other equipment or systems when an alarm condition occurs.

The operating and design parameters of the radiation monitors will not change. The proposed change affects only the radiation level at which an alarm condition is created and does not affect any accident assumptions or radiological consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed radiation monitor alarm revisions cannot initiate a new type of accident. A failure of the monitor itself cannot serve as the initiating event of an accident and has no effect on the operation of a safety system. Operator action is not made solely on a radiation monitor alarm; other plant condition indicators are also evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The referenced radiation monitoring channels have no capability to mitigate the consequences of an accident. Also, they do not interface with any safety related system. The containment area monitors are safety related channels which provide indication to the operator of the integrity of the fission product barriers in containment. This indication, combined with other indications of plant conditions may direct an operator to take action to mitigate the consequences of an accident. The alarm setpoint itself does not perform any specific safety related function and the trip value is not referenced in the Updated Final Safety Analysis Report (UFSAR), nor does any site design basis document take credit for this setpoint. Safety limits and limiting safety system settings are not affected by this proposed change. Also, the site will continue to meet the requirements of 10 CFR Part 100 which limits offsite dose following a postulated fission product release.

Therefore, use of the proposed technical specification would 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.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: November 22, 1995

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) Index to delete reference to the BASES. The proposed revisions to Turkey Point Units 3 and 4 TS are administrative in nature. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. The Technical Specification BASES, per 10 CFR 50.36(a), are not a part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59. Therefore, the proposed change does not affect the probability or consequences of accidents previously analyzed.

(2) The proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments are administrative in nature. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative change, since the proposed change does not involve the addition or modification of equipment nor does it alter the design or operation of affected plant systems, structures, or components.

(3) The proposed license amendments do not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The BASES information, per 10 CFR 50.36(a), is not a part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59. Therefore, the proposed change does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International

University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: November 3, 1995

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to delay for one cycle the volumetric and surface examinations of the Reactor Coolant Pump (RCP) motor flywheels required by Regulatory Guide (RG) 1.14, Regulatory position C.4.b, incorporated by reference in Technical Specification 5.6.2.8.c, to coincide with Crystal River Unit 3 (CR-3) Refueling Outage 11, scheduled for Spring 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The safety function of the RCP flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large LOCA [loss-of-coolant accident]. The estimated maximum obtainable speed in the event of a Reactor Coolant System piping break was established conservatively. The proposed one time change does not affect that analysis. Reduced coastdown times due to a single failed flywheel would not place the plant in an unanalyzed condition since a locked rotor (instantaneous coastdown) is analyzed in the FSAR [Final Safety Analysis Report]. The proposed change does not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction to any margin of safety.

FPC [Florida Power Corporation] has performed two full volumetric examinations in excess of those recommended in RG 1.14, Revision 1 during the Second ISI [inservice inspection] Interval. The margins of safety defined in RG 1.14, Revision 1 used in the analysis are not significantly changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 10, 1995

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for containment systems to reflect the adoption of the requirements of 10 CFR Part 50, Appendix J, Option B, and the implementation of a performance-based containment leak-rate testing program at the Edwin I. Hatch Nuclear Plant, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated. The proposed changes do not involve any physical or operational changes to structures, systems or components. The proposed changes provide a mechanism within the TS for implementing a performance-based leakage rate test program which was promulgated by the revision to 10 CFR 50 to incorporate Option B to Appendix J. The TS Limiting Conditions for Operation (LCO) remain unaffected by these changes. Thus, the safety design basis for the accident mitigation functions of the primary containment, the airlocks, and the primary containment isolation valves is maintained. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed. Revising Surveillance Requirement acceptance criteria and frequencies does not physically modify the plant and does not modify the operation of any existing equipment.

3. The proposed changes do not involve a significant reduction in the margin of safety, nor do they affect a safety limit, an LCO, or the manner in which plant equipment is operated. The NRC letter dated November 2, 1995, recognizes that changes similar to the proposed changes are required to implement Option B of 10 CFR 50, Appendix J. In NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based test intervals for Appendix J testing will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: January 16, 1995

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Section 6.5.1.7 of the administrative controls portion of the technical specifications. The revision would change Section 6.5.1.7 to delete the requirement for personnel in the internal GPU Nuclear (GPUN) Review and Approval matrix to render an unreviewed safety question (USQ) determination regarding (1) proposed changes to unit technical specifications and (2) investigations of violations of technical specifications. Both of these activities involve docketed correspondence with the NRC in which the USQ determination is made and justified. This obviates the need for a requirement for the licensee to perform and document an internal USQ

determination. This change would make the TMI-2 Technical Specifications consistent with the Standard Technical Specifications for B&W Plants (NUREG 1430).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to perform a no significant hazards consideration. 10 CFR 50.92 states that an amendment to a facility license involves no significant hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

The proposed change to the technical specifications is administrative and does not involve any physical changes to the facility. No changes are made to operating limits or parameters, nor to any surveillance activities. Based on this, GPU Nuclear has concluded that the proposed change does not:

1. Involve a significant increase in the probability of occurrence of the consequences of an accident previously evaluated. The proposed amendment is purely administrative and affects only the review of activities that involve considerable review by the NRC. This change will not degrade the performance of review for either of the two activities that are affected. This proposed technical specification change does not involve changes to hardware configuration, operation, or testing. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident since the change is administrative and no new failure modes are created.

3. Involve a change in the margin of safety. This change is administrative in nature; compatible with standard technical specifications; and does not affect any safety settings, equipment, or operational parameters.

Based on the above analysis it is concluded that the proposed changes involve no significant safety hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Seymour H. Weiss

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.1.3, ''Control Rod OPERABILITY,'' to include the 25% surveillance overrun allowed by Limiting Condition for Operation (LCO) 3.0.2 into the allowances of the surveillance Notes for control rod ''notch'' testing per Surveillance Requirement (SR) 3.1.3.2 and SR 3.1.3.3. The proposal also includes a clarification to the description of TS Table 3.3.3.1-1, ''Post Accident Monitoring Instrumentation,'' Function 7, to indicate that the Function's requirements apply to the position indication for only automatic primary containment isolation valves, rather than all primary containment isolation valves. Finally, the proposal includes changes to correct a number of editorial and typographical errors inadvertently contained in TS 3.3.4.1, ''End of Cycle Recirculation Pump Trip (EOC-RPT) Instrumentation,'' TS 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' TS 3.3.8.2, ''Reactor Protection System (RPS) Electric Power Monitoring,'' and TS 3.6.5.2, ''Drywell Air Lock.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes associated with Limiting Condition for Operation (LCO) 3.1.3 are being made to make the surveillance requirement (SR) Notes agree with their original intent. The Notes were originally intended to allow the testing of control rods to be tracked as a group, i.e., partially withdrawn and fully withdrawn. In the event that a control rod(s) has changed from one test group to another, the Notes were intended to allow performance of the next surveillance on that control rod(s) to be delayed to coincide with the next regularly scheduled performance of the test of the new group. However, these Notes failed to include the 25% surveillance extension allowances of SR 3.0.2. This proposed change merely adds the 25% extension to the time allowed by the Notes to make them agree with the Frequency plus the extension allowance of SR 3.0.2. The addition of the word ''fully'' to the Note for SR 3.1.3.2 is to provide for clarification only. These changes are consistent with changes approved for the Grand Gulf Nuclear Station (GGNS) and River Bend Station and are being proposed for the Clinton Power Station (CPS) for consistency. The proposed changes do not involve a change to the control rods or control rod drive system design or operation. Further, the proposed change does not affect the way in which the associated control rod test is performed, only the ''triggers'' for performance of the test are affected. These triggers are being revised to make them consistent with their original intent. As a result, the proposed change cannot increase the probability or the consequences of any accident previously evaluated.

The proposed change to the description of LCO 3.3.3.1 Function 7 to include ''automatic'' is provided for clarification only. As described in the Bases for this Function, the requirements for operability are currently only associated with automatic primary containment isolation valves (PCIVs). As a result, this change does not involve a change to the scope of this LCO. In addition, these changes are consistent with changes approved for GGNS and are being proposed for CPS for consistency. Since this request does not affect the design or operation of this equipment, nor does it alter the scope of this Technical Specification (TS) requirement, this proposed change cannot increase the probability or the consequences or any accident previously evaluated.

The remaining proposed changes are purely editorial and do not affect the design or operation of any equipment or alter the technical requirements of any TS. As a result, these proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not affect the design or operation of any equipment. In addition, the proposed changes do not affect the manner in which any test is performed or involve a change to any plant operating mode or configuration. As a result, Illinois Power has concluded that the proposed changes cannot create the possibility of an accident not previously evaluated.

(3) The proposed changes to the SRs for LCO 3.1.3 are being made to make the SR Notes agree with their original intent and thus permit control rods to be tested as originally intended. The proposed changes do not involve a change to the control rods or control rod drive system design or operation. Further, the proposed change does not affect the way in which this test is performed or the routine Frequency of performing the test, only the ''triggers'' are affected. Since these triggers are being revised to make them consistent with their original intent, Illinois Power has determined that this change does not result in a reduction in the margin of safety.

The proposed change to the description of LCO 3.3.3.1 Function 7 to include ''automatic'' is provided for clarification only. As described in the Bases for this Function, the requirements for operability are

currently only associated with automatic PCIVs. As a result, this change does not involve a change to the current scope of this LCO. Since this request does not affect the design or operation of this equipment, nor does it alter the scope of this TS requirement, this proposed change does not result in a reduction in the margin of safety.

The remaining changes are purely editorial and do not affect the design or operation of any equipment or alter the technical requirements of any TS. As a result, these proposed changes do not result in a 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.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment would revise Technical Specification 5.2.2.e, ''Unit Staff,'' to revise the requirements for controls on the working hours of unit staff who perform safety related functions. The proposal would clarify the approval requirements for deviations from the overtime guidelines and eliminate the requirement for a monthly review of individual overtime, consistent with GL 82-12, ''Nuclear Power Plant Staff Working Hours,'' dated June 15, 1982.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a change to the plant design or operation. The proposed changes do not affect the level of approval required for deviations from the overtime guidelines. As the Technical Specifications will continue to require deviations from the guidelines for overtime control to be approved and documented, the proposed changes do not adversely affect the level of alertness for the unit staff who perform safety-related functions. The current requirement for the plant manager (or his designee) to perform a monthly review of individual overtime is an after the fact review that has not been proven to provide any significant benefit with respect to the control of individual overtime. In addition, the proposed changes do not directly affect the automatic operation of equipment or systems assumed to mitigate the consequences of previously evaluated accidents. As a result, the proposed changes do not affect any of the parameters or conditions that contribute to initiation of an accident previously evaluated, and thus, the proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not involve a change to the plant design or operation. The proposed changes do not affect the level of approval required for deviations from the overtime guidelines and do not adversely affect the level of alertness for the unit staff who perform safety-related functions. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to initiation of an accident, and thus cannot create the possibility of an accident not previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety. As noted previously, the proposed changes do not change the level of approval required for deviations from the overtime guidelines. Only the requirement for an after-the-fact monthly review is proposed to be deleted. To the extent that personnel alertness may be regarded as a margin of safety, deleting this requirement will not result in a significant reduction in a margin of safety since overtime controls consistent with the guidelines and requirements of GL 82-12 will continue to remain in place.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Gail H. Marcus

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: May 19, 1995, as supplemented October 20, 1995 (AEP:NRC:1213A)

Description of amendment requests: The proposed amendments would modify the Technical Specification (TS) action statement associated with the main steam safety valves (MSSVs). The action statement would reflect different requirements based on operating mode and the power range neutron flux high setpoint with inoperable MSSVs would be revised in response to an issue raised in Westinghouse Nuclear Safety Advisory Letter 94-001. The supplement also requested the addition of an exemption to TS 4.0.4 in the surveillance requirements for the MSSVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Correction of the setpoint methodology does not represent a credible accident initiator. The new methodology reduces the allowable power level setpoints and is conservative compared to the presently evaluated setpoints. The consequences of any previously evaluated accident are not adversely affected by this action because the decrease in the setpoints resulting from the new calculational methodology will ensure that the MSSVs are capable of relieving the pressure at the allowable power levels. Based on these considerations, it is concluded that the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Correcting the overly restrictive action statements of T/S 3.7.1 does not involve a significant increase in the probability of an accident. The proposed changes modify existing text to more accurately reflect the intention of the restrictions imposed by the action statements. The changes do not create any situation that would initiate a credible accident sequence.

The proposed 4.0.4 exemption is necessary to make the T/Ss accurately reflect limitations associated with conduct of the surveillance in Mode 3. Additionally, the change is needed to address the fact that unscheduled outages can and do occur and, when they do, surveillances can expire with no way to correct the situation until the unit returns to power. Since the purpose of the 4.0.4 exemption is to allow surveillances to be conducted after an extended period of reactor shutdown, the decay heat to be removed by the MSSVs will be less than (and therefore conservative compared to) the conditions experienced when the surveillances are already allowed by the T/Ss. These allowed conditions include conduct of the surveillance during power operation or immediately after shutdown. Therefore, we believe that any increase in the probability of occurrence or consequences of an accident previously analyzed would be insignificant.

Criterion 2

The change in Table 3.7-1 reduces the allowable power levels that can be achieved in the event that one or more main steam safety valve(s) is inoperable. This change is a result of vendor guidance to correct an error in the existing methodology used to determine the setpoints for the power level.

Changing the methodology used to determine the setpoints, and lowering the setpoints themselves, do not create a new condition that could lead to a credible accident. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The action statements remain in effect to perform the intended function of protecting the plant's secondary side when the main steam safety valves are inoperable. They have only been modified to correct the overly restrictive language that specifies when, in each mode, specific actions must be taken. Therefore, the proposed change does not create a new or different type of accident.

Because the proposed 4.0.4 exemption requires neither physical changes to the plant nor changes to the safety analyses, we believe that they will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

The margin of safety presently provided is not reduced by the proposed change in the setpoints. The change will correct the limiting power levels that are to be implemented when MSSVs are inoperable. This action does not adversely affect the margin that was previously allocated for the ability of the MSSVs to relieve secondary side pressure. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The margin of safety is also not significantly reduced by the proposed change to the action statements of the T/S. The proposed revision clarifies when specific actions are to be taken in response to inoperable main steam safety valves. The changes do not decrease the effectiveness of the actions to be taken; therefore, they do not significantly reduce any margin of safety.

The margin of safety is not adversely affected by the proposed exemption to T/S 4.0.4, since the surveillance conditions allowed by the exemption are bounded by the normal surveillance conditions seen immediately after shutdown or during power operation.

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 requests involve no significant hazards consideration. The initial application was noticed in the Federal Register on June 21, 1995 (60 FR 32368).

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Brian E. Holian, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 10, 1995 (AEP:NRC:0896X) (Supersedes application dated June 15, 1995.)

Description of amendment requests: The proposed amendments would change the 18-month emergency diesel generator (EDG) surveillance test from a 24-hour run to an 8-hour run and would add voltage and frequency measurement and power factor monitoring.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The safety function of the EDGs is to supply AC electrical power to plant safety systems whenever the preferred AC power supply is unavailable. Through surveillance requirements, the ability of the EDGs to meet their load and timing requirements is tested and the quality of the fuel and the availability of the fuel supply are monitored. Reduction of the 24 hour run to 8 hours will not reduce the surveillance effectiveness and will sufficiently exercise the EDG and its support systems to identify potential conditions that could lead to performance degradation (See Attachment 4 [of amendment request]). Further, monthly full-load testing will provide confidence in diesel reliability and performance capability. Based on these considerations, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed changes do not involve physical changes to the plant or changes in plant operating configuration. The changes only involve EDG surveillance test requirements. These changes will not affect EDG operability and are designed to improve surveillance effectiveness. Also, paralleling the diesel to the system grid during normal operations has been performed to fulfill monthly surveillance requirements when the resistive load banks were not available.

It is recognized that, during the 1 hour monthly surveillance test period, the diesel could be exposed to electrical system transients (e.g., transients induced by inclement weather conditions) which could cause the paralleled diesel output breaker to trip open. Such a scenario, although unlikely, is mitigated by the availability of the alternate EDG which is placed in the auto start mode prior to the surveillance. In addition, during testing, an operator is continuously monitoring the diesel control panel and can, if necessary, reset the affected EDG lockout relays to restore EDG availability. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Although the duration of the EDG 18 month 24 hour surveillance test would be reduced, the EDG components will continue to be sufficiently exercised such that the ability to detect incipient and degraded conditions will be maintained (See Attachment 4, Figure 2 [of amendment request]). Also, the added review of diesel reactive loading ensures that test conditions closely match potential emergency conditions. In addition, the monthly full-load testing will provide confidence in diesel reliability and performance capability without impacting diesel operability. During the monthly test, the impact on plant safety due to potential exposure to transient grid conditions is considered to be insignificant based on the likelihood of such transients coincident with the testing and the mitigating factors discussed in Criterion 2 above.

Based on the above considerations, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. This notice supersedes the staff's notice published in the Federal Register on July 19, 1995 (60 FR 37096).

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Brian E. Holian, Acting

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 25, 1995

Description of amendment request: The amendment request would revise the Technical Specifications (TS) to relocate the flow-biased average power range monitor (APRM) scram and rod block setpoint requirements for reactor operation with excessive core peaking, which will also include surveillance requirements to verify the setpoints. The amendment would also delete TS Figure 2.1.2, and any references to the figure. APRM meter setting adjustments would be changed to allow setpoint adjustment to be made at power levels less than or equal to 90% of the rated, and the

requirement that the scram setting adjustment be <10% would be further defined as <10% of the rated thermal power. The amendment would incorporate several editorial changes and renumbered pages, the removal of blank pages, a revised Table of Contents, and a modified Bases section for the APRM setpoint requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes do not cause the APRM scram and rod block setpoints or APRM meter readings to be manipulated differently. The change limiting the scram and rod block setting adjustments to less than 10% of rated thermal power is more conservative than the current specification in that it allows the APRM meter indication to be set closer to the flow-biased scram or rod block setpoint. There are no other changes to the basic function of any plant equipment. The proposed changes to technical specifications will not decrease the margin to the fuel thermal-mechanical design limits, so the potential for any fuel failure from the LHGR [linear heat generation rate] transient overpower condition is not increased. Therefore, the consequences of a transient overpower are also not increased. Based on the above, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

Moving the APRM setpoint adjustment from Section 2 to Section 3/4.11 does not reduce or eliminate any requirements. The requirements for the APRM setpoint adjustment are more clearly defined in the LCO [limiting conditions for operation] and Surveillance Requirements with specific applicability and corrective action requirements. The proposed changes do not affect the basic function of any plant equipment. The basic process for performing the APRM setpoint adjustment is not significantly changed, so the proposed changes do not create a new process and do not involve any new failure that would cause a new or different kind of accident to occur.

The elimination of redundant information in the technical specifications and the relocation of information pertinent to the operators for performing the APRM setdown determination does not create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Allowing APRM setpoint adjustment during power operation at off-rated conditions improves the flexibility to make control rod pattern or core flow adjustments, but will still preserve the required setdown factor that must be maintained in that flux shape and power level. The change to set up the APRM meter reading up to 10% above the nominal power indication (instead of setting up only to the current MFLPD [maximum fraction of limiting power density] percentage) allows a higher APRM meter setting to be made. This allows the conservative setting, but eliminates frequent setting changes each time a new value of FRP/MFLPD [fraction of rated power] is calculated provided the APRM setting remains conservatively greater than or equal to MFLPD/FRP multiplied by percent core thermal power. Thus, the margins to the fuel thermal and mechanical design limits are not reduced. The fuel remains adequately protected from failure due to a transient LHGR overpower condition. There is no reduction in any margin of safety.

The time requirements imposed are consistent with the current fuel thermal limit LCO actions and are more conservative than STS, therefore, the proposed action time requirement provides the same margin of safety as currently exists in the MP1 [Millstone Unit 1] Technical Specifications. The margins to the fuel thermal and mechanical design limits are not reduced. There is no reduction in any margin of safety and the fuel remains adequately protected from failure due to a transient LHGR overpower condition.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: November 20, 1995

Description of amendment request: The first of the proposed changes provides clarification to the applicability statement for the steam generator blowdown monitor in Table 3.3-12. The applicability is changed to be for Modes 1-4 only. The second proposed change involves the action statement for the steam generator blowdown monitor in Table 3.3-12, Action 2. The action required when the monitor is not operable is clarified to state that if discharges are suspended, no sampling is required. The last proposed change involves the applicability statement for the condensate polishing facility waste neutralizing sump radiation monitor. It is clarified to state that the monitor is only required when the pathway is in use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO [Northeast Nuclear Energy Company] concludes that these changes do not involve a significant hazards consideration since the proposed changes satisfy the criteria in 10CFR50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes clarify the modes and conditions for which the radiation monitors are utilized, as well as the required actions when the monitors are not operable. These changes are administrative in nature, therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no [e]ffect on the ability of the monitors to perform their design function. The clarifications do not involve any physical modifications to any equipment, structures, or components. The proposed changes have no impact on design basis accidents, and the changes will not modify plant response or create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

These changes do not have any impact on the protective boundaries and, therefore, have no impact on the safety limits for these boundaries. The instrumentation associated with these changes do not provide a safety function and only serve to provide radiological information to plant operators. The instrumentation has no [e]ffect on the operation of any safety-related equipment. No hardware, software, or setpoint changes are involved in this proposed change. These changes provide clarification of modes and conditions for which the radiation monitors are utilized. As such, these changes have no impact on 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.

Local Public Document Room location: Learning Resources Center,

Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: November 21, 1995

Description of amendment request: The proposed amendment would clarify the reactor containment building temperature as ''an equilibrium liner temperature,'' and the affected Bases will be updated to reflect the results of the most recent main steam line break (MSLB) analysis. The changes to the Bases also identify that the limiting event affecting containment temperature and pressure now includes the MSLB in addition to a Loss of Coolant Accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO [Northeast Nuclear Energy Company] concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10CFR50.92(c). That is, the proposed changes do not:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are clarifications that are administrative in nature. The changes only incorporate the revised containment analysis as approved by the NRC. There are no hardware changes and no change to the functioning of any equipment which could affect any operational modes or accident precursors. Therefore, there is no way that the probability of previously evaluated accidents could be affected.

There are no hardware modifications associated with these changes and no change to the functioning of any equipment which could affect radiological releases. The safety analysis of the plant is unaffected by the changes. Therefore, there is no effect on the consequences of previously evaluated accidents.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are clarifications that are administrative only. There are no hardware changes and no change to the functioning of any equipment which could introduce new or unique operational modes or accident precursors. Therefore, there is no possibility of an accident of a new or different type than previously evaluated.

Involve a significant reduction in a margin of safety.

These changes are clarifications that are administrative in nature. They do not increase or decrease any plant operating requirements or limits. Therefore, they have no effect on any safety analysis and no impact on 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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would remove the Technical Specification (TS) for motor operated valves with thermal overload protection and bypass devices (TS 3/4.8.4.2) to follow the guidance of the improved Westinghouse Standardized TS (NUREG-1431, Rev. 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report] is not significantly increased.

The removal of TS 3/4.8.4.2 from TS in no way impacts the accident analysis of the FSAR. Compliance of 10 CFR 50, as applies to Regulatory Guide 1.106, will be maintained and controlled through plant procedures with changes evaluated through 10 CFR 50.59 rather than through TS amendments. Therefore, the probability or consequences of a previously evaluated accident has not been increased.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed TSCR [TS change request] does not necessitate physical alteration of the plant nor changes in parameters governing normal plant operation. Therefore, the change does not create the possibility of a new or different kind of accident or malfunction.

3. The margin of safety has not been significantly reduced.

The removal of TS 3/4.8.4.2 and Table 3.8-2 will not diminish the existing thermal overload protection and/or bypass devices operability and testing requirements. They will be maintained and controlled in plant procedures, and changes will be subject to 10 CFR 50.59 review. Therefore, the margin of safety has not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Frederick J. Hebdon

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 21, 1995

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.5.2 by allowing a one time extension of the allowable outage time from 72 hours to 7 days for each residual heat removal (RHR) train. The one time extension is needed to allow maintenance and modification to the RHR system while the plant is in Mode 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

The probability of an accident previously evaluated in the FSAR [Final Safety Analysis Report] does not change. A one time extension to increase the allowed outage time for each train of RHR from 72 hours to 7 days affects only RHR train availability which does not contribute to the probability of a LOCA [loss-of-coolant accident]. The proposed change to TS 3/4.5.2 has been shown to have only a small increase in Core Damage Frequency. The consequences of a

LOCA does not change from those currently resulting from a LOCA initiated while in TS 3.5.2 ACTION statement (a.), thus, there is no change in consequences of an accident previously evaluated in the FSAR.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed TSCR [TS change request] only results in a one time increase in the allowable outage time for each train of RHR. It does not result in an operational condition different from that which has already been considered by TS. Therefore, the change does not create the possibility of a new or different kind of accident or malfunction.

3. The margin of safety has not been significantly reduced.

The effects of increasing the allowed outage time on the calculated core damage frequency has been evaluated and determined to be small.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 22, 1995

Description of amendment request: The proposed amendment would change the operating license to reflect the license transfer for part of Ohio Edison Company's ownership interest in the Perry Nuclear Power Plant (PNPP), Unit No. 1 to its wholly owned subsidiary, OES Nuclear Inc.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change. 48 Fed. Reg. 14,864 (1983).

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. PNPP's design and design bases will remain unchanged as will All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change. 48 Fed. Reg. 14,864 (1983).

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely an administrative change. 48 Fed. Reg. 14,864 (1983).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 20, 1995

Description of amendment request: The proposed changes would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). Specifically, the change would permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing.

The Nuclear Regulatory Commission (NRC) has amended its regulations to provide a performance-based option for leakage-rate testing of containments. This testing option is available in lieu of compliance with the prescriptive requirements contained in Appendix J regulations. In order to implement the performance-based leakage-rate testing option the TS must be changed to eliminate reference to the prescriptive Appendix J requirements. Therefore, the licensee is proposing a change to the NA-1&2 TS to eliminate the current prescriptive requirements for leakage rate testing of the containment and reference Option B to 10 CFR 50 Appendix J and NRC Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.'' This change will permit use of the performance-based surveillance testing, Option B, of 10 CFR 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station with the proposed change will not:

1. Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario which is important to safety and which has been previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. The proposed change permits a performance-based approach to determining the leakage-rate test frequency for the containment and containment penetrations (Type A, B, and C tests). Since the proposed change only affects the test frequency for containment and containment penetrations, the probability of occurrence of an accident is not affected by the proposed changes in the leak-rate test interval.

The proposed change increases the probability of a malfunction due to the longer intervals between leakage tests. It has been estimated that the longer test intervals will increase the overall accident risk to the public by approximately 0.7% and 2.2% (for changes in the frequency of Type A tests and Type B and C tests, respectively). However, this increase in accident risk has been judged to be insignificant. This increase has been reviewed and judged to be acceptable by the NRC as documented in NUREG-1493 and the recent rulemaking to 10 CFR 50 Appendix J.

The Limiting Conditions for Operation are not being changed for the containment or any other safety system. The containment and other safety system remain operable as

assumed in the accident analysis. Since the proposed change does not affect the Limiting Conditions for Operation for the containment, the containment penetrations, or the other safety systems, the consequences of an accident are not affected by the changes in test frequency.

2. Create the possibility of a new or different type of accident than those previously evaluated in the UFSAR.

Implementing the proposed Technical Specifications change to remove the prescriptive testing requirements and permit use of Appendix J, Option B, performance-based testing of containment and its penetrations do not create the possibility of an accident of a different type than was previously evaluated in the UFSAR. Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. Thus, the proposed Technical Specifications change in leakage-rate test frequency does not introduce any new accident precursors or modes of operation. The containment and containment penetrations will not be operated any differently as a result of the proposed change.

Therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report is not created by the proposed Technical Specifications change.

3. Involve a significant reduction in a margin of safety.

The proposed change, which replace[s] the present prescriptive testing requirements with Appendix J, Option B, performance-based testing of containment and its penetrations, will continue to ensure that the existing accident analysis assumptions are maintained. The containment and containment penetrations will not be operated or tested any differently. Only the leakage rate test frequency is being changed as a result of the proposed change. The operational leakage-rate test acceptance criteria and the operability requirements are not being changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 20, 1995

Description of amendment request: The proposed changes to the Surry Technical Specifications would eliminate the existing prescriptive testing requirements for leakage rate testing of the containment and instead reference the Nuclear Regulatory Commission (NRC) Regulatory Guide 1.163,'' Performance-Based Containment Leak-Test Program,'' which would permit use of the performance-based leakage rate testing, Option B of 10 CFR Part 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station with the proposed change will not:

1. Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario which is important to safety and which has been previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. The proposed change permits a performance-based approach to determining the leakage-rate test frequency for the containment and containment penetrations (Type A, B, and C tests). There are no plant modifications, or changes in methods of operation. Therefore, the changes in testing intervals for the containment and containment penetrations have no [e]ffect on the probability of occurrence of a LOCA [loss-of-coolant accident]. Since the proposed change only affects the test frequency for containment and the containment penetrations, and the as-found test acceptance criteria at Surry the probability of occurrence and the consequences of an accident are not affected by the proposed changes in the leak-rate test interval.

The proposed change increases the probability of a malfunction of equipment important to safety due to the longer intervals between leakage tests. It has been estimated that the longer test intervals will increase the overall accident risk to the public by approximately 0.7% and 2.2% (for changes in the frequency of Type A tests and Type B and C tests, respectively). However, this increase in accident risk has been judged to be insignificant. This increase has been reviewed and judged to be acceptable by the NRC as documented in NUREG-1493 and the recent rulemaking to 10 CFR 50 Appendix J.

The containment and other safety system remain operable as assumed in the accident analysis. Changing the as-found acceptance criterion to 1.0 La at Surry does not increase the probability or consequences of an accident, since the accident analysis assume[s] a leakage rate of La for Design Basis Accidents. The as-left Type A test acceptance criterion remains at less than [or equal to] 0.75 La. Since the proposed changes do not affect the Limiting Conditions for Operation for the containment, the containment penetrations, or the other safety systems, the consequences of an accident are not affected by the changes in test frequency.

Therefore, the probability of an accident or consequences of an accident are not adversely affected as a result of this change.

2. Create the possibility of a new or different type of accident than those previously evaluated in the UFSAR.

Implementing the proposed Technical Specifications change to remove the prescriptive testing requirements and permit use of Appendix J, Option B, performance-based testing of containment and its penetrations does not create the possibility of an accident of a different type than was previously evaluated in the UFSAR. Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications changes. Thus, the proposed Technical Specifications changes in leakage-rate test frequency do not introduce any new accident precursors or modes of operations. The containment and containment penetrations will not be operated any differently as a result of the proposed changes. Therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report is not created by the proposed Technical Specifications change.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specifications change, which replace[s] the present prescriptive testing requirements with Appendix J, Option B, performance-based testing of containment and its penetrations, will continue to ensure that the existing accident analysis assumptions are maintained. The containment and containment penetrations will not be operated or tested any differently. The leakage rate test frequency is being changed as a result of the proposed change. Changing the as-found acceptance criterion to 1.0 La at Surry does not increase the consequences of an accident, since the accident analysis assume[s] a leakage rate of La for Design Basis Accidents. The as-left Type A test acceptance criterion remains at less than [or equal to] 0.75 La, which maintains the operating margin. The operational leakage-rate test acceptance criteria and the operability requirements are not being changed. Therefore, the margin of safety as defined in the Technical Specifications bases is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 23, 1995

Description of amendment request: The proposed amendment would change the name of the licensee from Wisconsin Electric Power Company to Wisconsin Energy Company.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the proposed license amendment, there will be no physical change to the facilities and all Limiting Conditions for Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the facilities' Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will have no effect on the physical configuration of the facilities or the manner in which they will operate. The design and design basis of the plants will remain the same. The current plant safety analysis will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences for the facilities. The Limiting Conditions for Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications for the facilities are not affected by the proposed license amendment. The plant conditions for which the design basis accident analysis have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not involve a significant reduction in the margin of safety.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 17, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 15.6.3, ''Facility Staff Qualifications.'' The position of Health Physics Manager would be renamed Health Physicist. This change would provide additional staffing flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes separate the qualifications requirements of the Technical Specifications from the Health Physics Manager, while requiring that the same qualifications be fulfilled by a designated Health Physicist position within the organization. This change maintains the present knowledge requirements of the PBNP staff. The personnel holding the health physics qualifications are not considered in the probability of any accident. By ensuring the appropriate expertise remains on the staff to advise management on issues related to radiological safety, appropriate action is assured during analyzed events to assess and mitigate the radiological consequences. Therefore, this change does not affect the probability or consequences of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a new or different kind of accident from any accident previously evaluated.

The proposed change separates the Health Physics Manager qualifications from the position while maintaining the requirements for that expertise to be maintained within the organization. This is an administrative change only and does not affect any plant structures, systems and components. Therefore, a new or different kind of accident from any accident previously evaluated cannot result.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant reduction in a margin of safety.

The proposed changes are administrative only. The required levels of expertise and experience will be maintained within the Health Physics organization. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. MarcusWolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 22, 1995

Description of amendment request: The amendment would revise Technical Specification 3.9.4, ''Containment Building Penetrations,'' and its associated Bases section to allow the containment personnel airlock doors to be open during core alterations and movement of irradiated fuel in containment provided that a minimum of one door in the emergency airlock is closed and one door in the personnel airlock is capable of being closed. Also, Surveillance Requirement 4.9.4 would be revised to specify that each containment penetration should be in its ''required condition,'' instead of ''closed/isolated condition.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.9.4 would allow the containment personnel airlock to be open during fuel movement and core alterations. The containment personnel airlock is currently closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a fuel handling accident. The containment personnel airlock is not an initiator of any accident. Whether the containment personnel airlock doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

The proposed change does alter assumptions previously made in evaluating the radiological consequences of the fuel handling accident inside the containment building. The proposed change allows for the containment personnel airlock to be open during refueling. The radiological consequences described in this change are bounded by those given in the Wolf Creek Generating Station Safety Evaluation Report and General Design Criteria 19. All doses for the proposed change are less than the acceptance criteria, therefore, there is no significant increase in the consequences of an accident previously analyzed.

The proposed change would significantly reduce the dose to workers in the containment in the event of a fuel handling accident by accelerating the containment evacuation process. The proposed change would also significantly decrease the wear on the containment personnel airlock doors and, consequently, increase the reliability of the containment personnel airlock doors in the event of an accident.

Since the probability of a fuel handling accident is unaffected by the airlock door positions, and the increased doses do not exceed acceptance limits, operation of the facility in accordance with the proposed amendment would not affect the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change affects a previously evaluated accident, e.g., a fuel handling accident inside containment. The existing accident has been modified to account for the containment personnel airlock doors being opened at the time of the accident. It does not represent a significant change in the configuration or operation of the plant. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is reduced when the offsite and control room doses exceed the acceptance criteria in the Wolf Creek Generating Station Safety Evaluation Report. As previously discussed in the response to Standard I, the offsite and control room doses are below the acceptance criteria. Therefore, operation of the facility in accordance with the proposed amendment would 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.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois;Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would close out additional open items identified in the NRC staff's review of the upgrade of the Dresden and Quad Cities Technical Specifications (TS) to the standard Technical Specifications (STS) contained in NUREG-0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letter (GL), and (4) relocating specific items to more appropriate TS locations. The November 14, 1995, application proposed to close out all open items identified during the NRC's review as noted in previous NRC staff Safety Evaluations for previously provided submittals regarding the TSUP project.

Date of publication of individual notice in Federal Register: November 29,1995 (60 FR 61272).

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: for Dresden, the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois; and for Quad Cities Station, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois;Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would change the technical specifications of these plants to incorporate 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors'', Option B.

Date of publication of individual notice in Federal Register: December 7, 1995 (60 FR 62896)

Expiration date of individual notice: January 8, 1996

Local Public Document Room location: for Dresden Station, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois; for LaSalle County Station, Jacobs Memorial Library, Illinois Valley Community

College, Oglesby, Illinois; and for Quad Cities Station, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: November 14, 1995

Description of amendment request: The notice relates to your November 14, 1995, application to amend the Technical Specifications to provide a one-time exception to the Technical Specification 3.9.12, ''Fuel Building Storage Air Cleanup System,'' to allow the fuel storage building air cleanup system to be inoperable during intervals in which new fuel rack modules will be moved into and old fuel modules will be moved out of the fuel storage building.

Date of pulbication of individual notice in Federal Register: November 28, 1995 (60 FR 58688)

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 12, 1995, as supplemented by letter dated June 29, 1995

Description of amendment request: The proposed amendments would modify portions of Technical Specification Section 6.0, ''Administrative Controls.''

Date of publication of individual notice in Federal Register: November 24, 1995, (60 FR 58109)

Expiration date of individual notice: December 26, 1995

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 5, 1995

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report.

Date of publication of individual notice in Federal Register: November 28, 1995 (60 FR 58690)

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of amendments request: October 25, 1995

Description of amendments request: The proposed amendments would change position titles and reassign responsibilites at the upper management level to reflect a restructuring of Niagara Mohawk's upper management organization.

Date of publication of individual notice in Federal Register: November 16, 1995 (60 FR 57605)

Expiration date of individual notice: December 18, 1995

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 3, 1995

Description of amendment request: The notice relates to your October 3, 1995, application to amend the Technical Specifications to remove the Limiting Condition for Operation (LCO) and Surveillance Requirements for the loss-of-normal power (LNP) trip function from Tables 3.2.2 and 4.2.1 and insert new LCO 3.2.F and Surveillance Requirement 4.2.F. In addition, the proposed amendment will add a new table to specify the required LNP instrumentation for each bus, will update the Table of Contents, will make some editorial changes, and will revise the associated Bases section.

Date of publication of individual notice in Federal Register: December 4, 1995 (60 FR 62111).

Expiration date of individual notice: January 3, 1996

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: July 3, 1995

Brief description of amendments: The amendment temporarily adds new Action Statements 3.8.1.1.f and 3.8.1.1.g to Technical Specification 3.8.1.1, ''A.C. Sources - Operating,'' to provide a method of responding to sustained degraded voltage. Also, Bases 3/4.8.1, 3/4.8.2, and 3/4.8.3 (≥A.C. Sources,'' ''D.C. Sources,'' and ''Onsite Distribution

Systems,'' respectively) are being revised to provide guidance on how and why degraded offsite power voltage and the number of startup transformers in service affect compliance to GDC 17 and to give the basis for the additional action statements.

Date of issuance: November 28, 1995

Effective date: November 28, 1995

Amendment Nos.: Unit 1 - Amendment No. 102; Unit 2 - Amendment No. 90; Unit 3 - Amendment No. 73

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39431) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 30, 1994, as supplemented August 4, 1995.

Brief description of amendments: This application upgrades the current custom Technical Specifications (TS) for Dresden and Quad Cities to the Standard Technical Specifications contained in NUREG-0123, ''Standard Technical Specification General Electric Plants BWR/4.'' This application upgrades only Section 3/4.2, ''Instrumentation.''Date of issuance: November 20, 1995

Effective date: Immediately, to be implemented no later than June 30, 1996.

Amendment Nos.: 142, 136, 164, and 160

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45177) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IllinoisDocket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 17, 1993, as supplemented July 20, 1995.

Brief description of amendments: This application upgrades the current custom Technical Specifications (TS) for Dresden and Quad Cities to the Standard Technical Specifications (STS) contained in NUREG-0123, ''Standard Technical Specification General Electric Plants BWR/4.'' This application upgrades only Section 3/4.7, ''Containment Systems.''

Date of issuance: November 27, 1995

Effective date: Immediately, to be implemented no later than June 30, 1996, for Dresden Station and June 30, 1996, for Quad Cities Station.

Amendment Nos.: 143, 137, 165, 161

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39433) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 12, 1995, as supplemented by letter

dated June 29, 1995

Brief description of amendments: The amendments would revise and clarify portions of Technical Specification Section 6.0, ''Administrative Controls.''

Date of Issuance: December 1, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 211, 211, and 208

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 15, 1995 (60 FR 14020) The June 29, 1995, letter provided clarifying information that did not change the scope of the January 12, 1995, application and the initial proposed no signficant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 1, 1995No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: September 1, 1995, as supplemented by letter dated November 15, 1995

Brief description of amendments: The amendments revise Technical Specification (TS) 6.9.2 to include references to updated or recently approved mathodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. The subject references have previously been reviewed and approved by the NRC staff.

Date of Issuance: December 4, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 212, 212, 209

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52928) The November 15, 1995, letter provided clarifying information that did not change the scope of the September 1, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995, as supplemented by letter dated October 4, 1995

Brief description of amendments: These amendments concern revising certain surveillance intervals and allowable outage times for the RPS and ESFAS equipment.

Date of issuance: November 29, 1995

Effective date: November 29, 1995Amendment Nos. 179 and 173Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 25, 1995 (60 FR 54720) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 1995 No significant hazards consideration comments received: No

*Local Public Document Room location:*Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 24, 1995, as supplemented July 24, 1995

Brief description of amendment: The amendment revises the Technical Specifications to extend the test interval for the source range neutron flux instrumentation from 7 days prior to startup to 6 months prior to startup.

Date of Issuance: November 24, 1995

Effective date: As of its date of issuance, to be implemented within 30 days.

Amendment No.: 199

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32365) The July 24, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 24, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 14, 1993, supplemented April 12, 1994

Brief description of amendment: The amendment revised the technical specifications (TSs) to include wording consistent with 10 CFR Part 20, and to deleted TSs governing miscellaneous radioactive material sealed sources.

Date of issuance: November 28, 1995

Effective date: November 28, 1995

Amendment No.: 174

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 1, 1993 (58 FR 46237) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Auburn Public Library, 118 15th Street, Auburn, NE 68305.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: July 24, 1995, as supplemented by letter dated October 30, 1995.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to reactor coolant system leakage. Specifically, the amendment deletes Table 3.4-1, ''Reactor Coolant System Pressure Isolation Valves'' from the Seabrook Station, Unit No. 1 TS section 3.4.6.2. Also, reference to Table 3.4-1 is deleted from Limiting Condition for Operation 3.4.6.2 f and from Surveillance Requirement 4.4.6.2.2. The information contained in Table 3.4-1 is to be relocated to the Technical Requirements Manual. Additionally, a footnote providing certain exceptions from the requirements of SR 4.4.6.2.2d for the RHR Pump A and RHR Pump B Suction Isolation Valves previously located on Table 3.4-1 is relocated as a footnote to SR 4.4.6.2.2d.

Date of issuance: November 28, 1995

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 44

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45180). The licensee's letter dated October 30, 1995, provided a minor revision to the application that was within the scope of the original notice and did not change the initial proposed no significant hazards consideration determination. The October 30, 1995, letter also contained a request for an additional change that will be addressed separately.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 20, 1995

Description of amendment request: The amendment modifies the Appendix A Technical Specifications for the Engineered Safety Features Actuation System Instrumentation. Specifically, the amendment revises the Seabrook Station Technical Specifications to relocate Functional Unit 6.b, ''Feedwater Isolation - Low RCS T_{avg} Coincident with a Reactor Trip'' from Technical Specification 3.3.2. ''Engineered Safety Features Actuation System Instrumentation'' to the Technical Requirements Manual which is a licensee controlled document.

Date of issuance: November 29, 1995

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 45

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1995 (60 FR 54524). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 7, 1995.

Description of amendment request: The amendment increases the temperature limit, as specified by the

footnotes to Technical Specification Surveillance Requirement 4.4.7 and to Table 3.4-2, above which reactor coolant sampling and analysis for dissolved oxygen is required and dissolved oxygen limits apply.

Date of issuance: November 29, 1995

Effective date: November 29, 1995

Amendment No.: 46

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37098). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 8, 1995

Brief description of amendment: The amendment modifies Surveillance Requirement (SR) 4.5.1.c and deletes Technical Specification (TS) 3/4.8.4.3, ''AC Circuits Inside Containment.'' The changes to SR 4.5.1.c clarify the requirements for securing the safety injection accumulator isolation valve breakers (3SIL*MV8808A, B, C, and D) in the tripped position for the applicable modes. The amendment also deletes TS 3/4.8.4.3 since reasonable assurance is provided to protect the electrical penetrations and penetration conductors against an overcurrent condition and single failure of a circuit breaker.

Date of issuance: November 29, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 121

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39444) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: June 23, 1995

Brief description of amendment: This amendment involves a one-time change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) system, Residual Heat Removal Service Water (RHRSW) System, the Suppression Pool Cooling, the Suppression Pool Spray, and Low Pressure Coolant Injection modes of the Residual Heat Removal System, and Core Spray System to be extended from 3 and 7 days to 14 days during the Unit 2 refueling outage scheduled to begin in January 1996. This proposed extended AOT allows adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

Date of issuance: November 30, 1995

Effective date: November 30, 1995

Amendment No. 70

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39448) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1995No significant hazards consideration comments received: No

*Local Public Document Room location:*Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 3, 1995, as supplemented April 12, 1995, and November 20, 1995.

Brief description of amendment: The amendment revises the TS to extend the calibration frequency for the following:

(1) Containment water level monitor instrumentation (specified in TS Table 4.1-1)

(2) Containment building ambient temperature sensors (specified in TS Table 4.1-1)

(3) Seismic monitoring instrumentation (specified in TS Table 4.10-2)

In addition, the amendment added a new surveillance requirement to TS Table 4.1-1 for testing the core exit thermocouples.

These changes allow operation on a 24-month fuel cycle and follow the guidance provided in Generic letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' as applicable.

Date of issuance: December 1, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 164

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1995 (60 FR 24917) The April 12 and November 20, 1995, letters provided clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 27, 1995

Brief description of amendment: The amendment changes the Technical Specifications to incorporate updated pressure vs. temperature operating limit curves.

Date of issuance: November 28, 1995

Effective date: As of the date of issuance to be implemented within 60 days

Amendment No.: 88

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47624) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:*Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 31, 1994, supplemented by letters dated August 29, and October 16, 1995.

Brief description of amendment: This amendment changes Technical Specification (TS) 3.5.1, ''ECCS -

Operating,'' and associated Bases, to establish a new allowed out-of-service time. Action c.2 for TS 3.5.1 allows any one Low Pressure Coolant Injection subsystem, or one Core Spray subsystem, to be inoperable in addition to an inoperable High Pressure Coolant Injection system, for 72 hours.

Date of issuance: November 30, 1995

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 89

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 8, 1994 (59 FR 29631).The supplemental letters did not change the NRC staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: March 24, June 9, and June 30, 1995

Brief description of amendment: The amendment revised the Technical Specifications to allow a one-time extension for the performance of certain Surveillance Requirements (SRs). Affected SRs include penetration leak rate testing, valve operability testing, instrument calibration, response time testing, and logic system functional tests. The proposed changes are to support refueling outage 5 scheduled to begin no later than February 15, 1996.

Date of issuance: November 29, 1995

Effective date: November 29, 1995

Amendment No. 75

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1995 (60 FR 24919) and August 16, 1995 (60 FR 42612)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:*Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 21, 1994

Brief description of amendment: The amendment revised Technical Specification 3/4.6.1.2, ''Primary Containment Leakage,'' and its associated Bases to reflect the partial exemptions to the requirements of 10 CFR Part 50, Appendix J, Sections III.A.5(b)(2), III.B.3, III.C.3, III.A.1(d), III.D.1(a), and III.D.3 that were granted by the NRC on December 4, 1995.

Date of issuance: December 8, 1995

Effective date:]December 8, 1995

Amendment No.: 76

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 16, 1995 (60 FR 42611) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 28, 1995

Brief description of amendment: The amendment clarifies the limiting condition for operation for TS 3.8.1.1 and 3.8.1.2 from ''independent'' circuit to ''qualified'' circuit; explains in the Bases the requirements for operability of an offsite circuit; deletes the STAGGERED TEST BASIS scheduling requirement to perform emergency diesel generatorsurveillances; explains in the Bases an acceptable method for verification of Emergency Diesel Generator speed for surveillance requirements (SR) 4.8.1.1.2.a.4 and 4.8.1.1.2.c.4; removes a surveillance test extension that has expired for SR 4.8.1.1.1.b; adds an exception for SR 4.8.1.1.2.c.5 and 4.8.1.1.2.c.7 to SR 4.8.1.2; and revises Bases 3.0.5 to reflect the clarification from ''independent'' circuit to ''qualified'' circuit.

Date of issuance: December 8, 1995

Effective date: December 8, 1995

Amendment No.: 203

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 8, 1995 (60 FR 56370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 2, 1995

Brief description of amendment: The amendment revises Technical Specification (TS) Section 5.0, ''Design Features,'' by adding a site location description, removing site area maps, removing containment and reactor coolant system design parameters, removing the description of the meteorological tower location, removing component cyclic or transient limits, and revising the fuel assembly description to include the use of ZIRLO clad fuel rods.

Date of issuance: December 8, 1995

Effective date: December 8, 1995

Amendment No.: 204

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 8, 1995 (60 FR 56371) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 23, 1995

Brief description of amendment: The amendment revises Technical

Specification (TS) 4.1.3.1.2, 4.4.6.2.2.b, 4.4.3.2, 4.6.2.1.d, 4.6.4.2, and Table 4.3-3 in accordance with guidance provided in NRC Generic Letter (GL) 93-05, ''Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operations.'' Additionally, the amendment revises TS 4.1.1.1.1, 4.1.1.2, 3/4.1.3.1 and the associated Bases to implement portions of NUREG-1431, ''Standard Technical Specifications - Westinghouse Plants.''

Date of issuance: December 7, 1995

Effective date: December 7, 1995

Amendment No.: 105

Facility Operating License No. NPF-30. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45187). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 13th day of December 1995.For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 95–30755 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–F

Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR–0058, Revision 2; Issuance, Availability

The Nuclear Regulatory Commission has recently published ''Regulatory Analysis Guidelines of the Nuclear Regulatory Commission,'' NUREG/BR–0058, Revision 2. For over 20 years the NRC has conducted regulatory value-impact analyses to determine whether there is an adequate basis for imposing new requirements on licensees. In January 1983, the NRC first published its Regulatory Analysis Guidelines (NUREG/BR–0058) in order to clarify and formalize its existing value-impact guidance for the analysis of regulatory actions. Revision 1 to NUREG/BR–0058 was issued in May 1984 to include appropriate references to NUREG/CR–3568; a handbook that provided implementation guidance to the NRC staff for the policy set forth in the Guidelines.

In August 1993, the NRC published a draft version of the Guidelines, Revision 2, and invited public comment on the draft report. This revision reflects (1) the NRC's accumulated experience with implementing the previous Guidelines; (2) changes in NRC regulations and procedures since 1984, especially the backfit rule (10 CFR 50.109) and the Policy Statement on Safety Goals for the Operation of Nuclear Power Plants (51 FR 30028, August 21, 1986); (3) advances and refinements in regulatory analysis techniques; (4) regulatory guidance for Federal agencies issued by the Office of Management and Budget (OMB); and (5) procedural changes designed to enhance NRC's regulatory effectiveness.

In the draft report, the NRC indicated that a review and analysis of the dollar per person-rem conversion factor policy was ongoing and until its completion, the existing conversion factor policy would remain operative. The conversion factor is a central consideration because it is the basis for translating radiological exposure to a monetary value and, as such, allows direct comparison between the potential health and safety benefits and the costs of a proposed regulatory initiative. The staff's reevaluation has now been completed, and the Commission has decided to implement a $2000 per person-rem conversion factor, subject it to present worth considerations, and limit its scope solely to health effects. This is in contrast to the previous policy and staff practice of using an undiscounted $1000 per person-rem conversion factor which served as a surrogate for all offsite consequences (health and offsite property).

The new conversion factor policy is based on a relatively simple and straightforward logic in which the dollar per person-rem conversion factor is defined as the product of the dollar value of the health detriment and a risk coefficient that establishes the probability of health effects as a result of low doses of radiation. In the NRC's formulation, the value of the latter term is on the order of 7×10^{-4} per rem which includes allowances for fatal cancers, nonfatal cancers, and severe genetic effects. The national and international bodies (NCRP, ICRP) directly responsible for evaluating and recommending a risk coefficient for the total health detriment are all in close agreement, and NRC has adopted their recommendations. For the dollar valuation of the health detriment, the NRC has adopted $3 million as a representative value. This estimate is consistent with OMB's best estimate and an extensive literature review performed by the NRC. The resulting $2000 conversion factor was derived by multiplying these two factors (7×10^{-4} and $3 million) and expressing the result with one significant digit.

In addition, to provide meaningful summations of the costs and benefits that accrue over time, the dollar valuation of person-rem are to be expressed on a present-worth basis. Based on OMB guidance, present-worth calculations are to use the recommended discount rate specified in the latest version of OMB Circular A–94. This circular was most recently updated in late 1992 and specifies the use of a 7-percent real discount rate.

The final change in conversion factor policy concerns the treatment of offsite property consequences. The $2000 conversion factor is now clearly defined as the value of the health effects associated with a person-rem of dose. As such, it can no longer be used as a surrogate value for other consequences that could be attributable to offsite radiological releases or exposures. Thus, in those regulatory applications where offsite property consequences could result, these consequences would have to be calculated separately, and incorporated into the overall value-impact assessment.

The net effect of this revised conversion factor policy on the bottom-line value-impact results is mixed. In most regulatory applications the only consequence of radiological exposure is health effects. As a result, the dollar valuation of a person-rem would shift from an undiscounted $1000 to a $2000 conversion factor which would be subject to present worth calculations. In these circumstances, the doubling of the conversion factor and discounting tend to cancel each other. The differential in total dollar valuation is not of major significance and no improvement or change in regulatory decisions is expected. However, there are select circumstances where improvements in regulatory decisionmaking are possible. In regulatory applications involving certain severe power reactor accidents, offsite property consequences are an expected outcome. Under the new policy, an additional dollar allowance would need to be included, and in these instances the change in total dollar value could be important to the regulatory decision.

The new conversion factor policy has been incorporated in this final version of the Guidelines without the opportunity for public comment. This position was adopted because the NRC was interested in avoiding further delay in publication of the Guidelines so that analysts will have the benefit of other areas of improved guidance. Furthermore, in most regulatory

applications this policy shift will have no meaningful effect on bottom-line cost-benefit results. In addition, given that this policy will be included in regulatory analyses for specific rulemakings, the opportunity to comment on it also exists within the context of individual regulatory initiatives. Finally, these Guidelines are not regulations and are not legally binding on anyone and are merely intended to inform the analyst as to expected staff practice.

A more complete discussion of the basis and implications of the new person-rem conversion factor are provided in NUREG 1530, ''Reassessment of NRC's Dollar Per Person-Rem Conversion Factor Policy'' (to be published in late 1995). Members of the public who may wish to comment on this issue are encouraged to do so, and, on the basis of these comments, the NRC holds open the possibility of revising this policy in the future.

Copies of NUREG/BR–0058, Revision 2, as well as NUREG–1530 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Dated at Rockville, Maryland, this 11th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30888 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1996, 34.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 14, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–30895 Filed 12–19–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179;

Rule 7d–1, SEC File No. 270–176, OMB Control No. 3235–0311;

Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 31a–2 concerns preservation of records by registered investment companies and certain majority-owned subsidiaries thereof. The Commission periodically inspects the operations of all registered investment companies to ensure their compliance with the provisions of the Investment Company Act of 1940 (''the Act'') and the rules thereunder. A significant portion of the time used in these inspections is spent reviewing the information contained in the books and records required to be preserved by Rule 31a–2. Each of the 4,902 respondents incur an average estimated 15.4 burden hours annually to comply with this requirement.

Rule 7d–1 specifies conditions under which a Canadian (or other foreign) management investment company may request an order from the Commission permitting it to register under the Act. The rule's information collection requirements seek to ensure that the substantive provisions of the Act may be enforced as a matter of contract right in the Untied States or Canada by the company's shareholders or the Commission.

The Commission believes that three Canadian investment companies and one other foreign investment company have registered under Rule 7d–1 and are currently active. Apart from information collection requirements imposed on all registered investment companies (which are reflected in the information collection burdens applicable to those requirements), Rule 7d-1 imposes ongoing burdens to maintain in the United States records of the company and related records of its investment adviser and to update, as necessary, a list of affiliated persons of the company, investment adviser, and principal underwriter. The four companies and their associated persons spend approximately 101 hours annually complying with the requirements of the rule. This estimate is a revision of the 75 burden hours currently allocated to Rule 7d–1. The revision reflects the inclusion of an additional respondent and the Commission staff's administrative experience with the rule.

Canadian and other foreign investment companies have not sought to register under the Act pursuant to Rule 7d–1 in the past three years. If a company were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens of approximately 90 hours on the company and its associated persons. Since no fund has sought to register under the Act pursuant to Rule 7d–1 in the last three years, the Commission is not including those burdens in its calculation of the annual hours burdens.

After registration, a foreign company may file a supplemental application seeking special exemptive relief from provisions of the Act based on the company's particular circumstances. Because such filings are not mandated by Rule 7d–1 and are made at a company's discretion, no burden hours are allocated for such applications.

Form N–14 is the form for registration of securities to be issued by investment companies registered under the Act in business combination transactions

specified in Rule 145(a) and exchange offers. There are approximately 95 registrants filing annually on Form N–14. Approximately 58,900 hours are used to meet the requirements of Form N–14. This represents 620 hours per registrant per year.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive study or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondent, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: December 13, 1995.

Jonathan G. Katz,

Secretary,

[FR Doc. 95–30857 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36589; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 6 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

December 13, 1995.

On November 13, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'') [1] submitted to the Commission proposed Amendment No. 6 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] Amendment No. 6 would extend the effectiveness of the Plan through December 29, 1995. On November 13, 1995, the Commission partially approved Amendment No. 6 to the Plan by extending its effectiveness through December 12, 1995.[3] The present order approves the remainder of the proposal by extending the effectiveness of the Plan through December 29, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[4] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission has extended the effectiveness of the Plan six times since then to allow the Participants to trade pursuant to the Plan while they finalize their negotiations for revenue sharing under the Plan.[5]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995. Since January 1995, the Commission has expected the Participants to conclude their financial negotiations promptly and to submit a filing to the Commission that reflected the results of the negotiations. Moreover, the Commission's August 1995 Extension Order required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995.

The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly, and specifically requests that the Participants submit to the Commission, on or before December 20, 1995, a proposed revenue sharing amendment, along with a proposed amendment to extend the effectiveness of the Plan through the pending comment period for the financial proposal. The Commission currently believes it is appropriate to extend the effectiveness of the Plan through December 29, 1995, so that operation of the Plan may continue while the Commission awaits these amendments and prepares them for publication in the Federal Register.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on December 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. This order extends these exemptions through December 29, 1995. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.[6] The Commission continues to believe that this exemptive relief is appropriate through December 29, 1995.

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[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.) Philadelphia Stock Exchange, Inc. (''Phlx'') and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are trade over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. for a more complete discussion of this Section 12(f) requirement, *see* November 1995 Extension Order, *infra,* at n. 2.

[3] Securities Exchange Act No. 36481 (November 13, 1995), 60 FR 58119 (''November 1995 Extension Order'').

[4] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 5.

[5] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order''), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (''October 1995 Extension Order''), and the November 1995 Extension Order, *supra* note 3.

[6] In the November 1995 Extension Order, the Commission extended these exemptions through December 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions through December 29, 1995. *See* letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated November 9, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, the October 1995 Extension Order, and the November 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by January 10, 1996.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period through December 29, 1995, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extension of the exemptive relief through December 29, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to submit the necessary filings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30913 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36587; File No. 600–28]

Self-Regulatory Organizations; Pro-Trade; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

December 13, 1995.

On September 22, 1994, ProTrade [1] filed with the Securities and Exchange Commission (''Commission'') a Form CA–1 requesting exemption from registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 17Ab2–1 thereunder.[3] Since the original filing, ProTrade has supplemented the information provided in its Form CA–1 filing with letters dated October 27, 1994, April 18, 1995, September 26, 1995, and October 2, 1995. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Introduction

ProTrade proposes to introduce an automated proprietary trading system (''System'') for over-the-counter option securities. ProTrade's customers, the users of the System, will be authorized to enter bids and offers for these options into the System. The System will electronically match the bids and offers and provide execution. Instantaneously with each execution, the proceeds of the transaction will be calculated, and the accounts of the trading parties will be debited and credited in settlement.

Accordingly, the System will combine into a single electronic format several functions that usually involve the collective efforts of: (1) An option broker-dealer, (2) an options exchange, and (3) an options clearing agency. ProTrade asserts that this unity of functions will bring new efficiencies to the options marketplace.

ProTrade has represented that its System will not commence operations before ProTrade: (1) has registered as a broker-dealer pursuant to the Exchange Act and has become a member of the National Association of Securities Dealers, Inc. (''NASD''),[4] (2) has registered the option securities that are to be traded in the System pursuant to the Securities Act of 1933 (''Securities Act''),[5] and (3) has received a no-action letter from the Division stating that the Division will not recommend enforcement action if ProTrade does not register as a securities exchange pursuant to the Exchange Act.[6]

ProTrade believes that its proposed operations would involve few, if any, clearing agency activities within the meaning of the Exchange Act. ProTrade also believes that its proposed registration as a broker-dealer, coupled with the proposed registration of its options under the Securities Act, will satisfy the regulatory scheme of the Exchange Act. ProTrade has stated that such registrations under both the Exchange Act and the Securities Act would provide the necessary and appropriate safeguards to protect investors and the public interest.[7] Accordingly, it is ProTrade's belief that an exemption from registration as a

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[1] ProTrade, located in Mercer Island, Washington, was incorporated under the laws of the State of Washington in January, 1986. Joseph A. Zajac, the company's President, owns 100% of ProTrade's stock.

[2] 15 U.S.C. 78q–1 (1988).

[3] 17 CFR 240.17Ab2–1 (1995).

[4] For the definitions of ''broker'' and ''dealer'' under the Exchange Act, *see* Sections 3(a) (4) and (5), 15 U.S.C. 78c(a) (4) and (5) (1988). *See also*, Section 15 of the Exchange Act, 15 U.S.C. 78*o* (1988), for broker-dealer registration requirements.

[5] 15 U.S.C. 77b(1) (1988). ProTrade's options are ''securities'' as that term is defined in Section 2(1) of the Securities Act, 15 U.S.C. 77b(1) (1988). As securities, they must be registered pursuant to Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 77f (1988), before they may be traded in interstate commerce.

The issuer of the options for purposes of the Securities Act will be ProTrade itself. For the definition of ''issuer,'' see Section 2(4) of the Securities Act, 15 U.S.C. 77b(4) (1988).

[6] For definition of ''exchange,'' *see* Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1) (1988). *See also*, Section 6 of the Exchange Act, 15 U.S.C. 78f (1988), for exchange registration requirements.

[7] ProTrade expects to have a net capital of $250,000, the amount that ProTrade states it will need to comply with Commission's uniform net capital rule, Rule 15c3–1, 17 CFR 240.15c3–1 (1995), as a broker-dealer that holds customers' funds (*i.e.*, a clearing broker-dealer). The Commission has taken no position on ProTrade's interpretation of its requirements under the uniform net capital rule.

clearing agency under the Exchange Act is warranted.

II. Description of Proposal

A. The System

1. Background

ProTrade reports that it has designed and developed the System as a ''stand-along'' electronic operation that integrates order-entry, trade-matching, and execution functions with the back office functions of accounting and settlement. ProTrade states that it will interpose itself between the trading parties of each trade and that it will guarantee performance to each contraparty. The System will be made available to a list of qualified customers. As the operator of the System, ProTrade will derive revenues from customer fees on all transactions effected in the System.[8]

2. Options Securities

The System is designed to process over-the-counter options on equities, equity indexes, foreign currencies, and interest rates. ProTrade plans to have two classes, Class A and Class B, of such options. Class A options will be uncertificated, European-style put and call options that will be cash settled and that will expire on the last trading day of the chosen month of expiration.[9] Class B options will be uncertificated put and call options that will have no standard terms and that will be individually negotiated by the trading parties.

3. Customers

As discussed below under Participation Standards, ProTrade will screen its prospective customers to determine whether they meet certain financial and operational standards.[10] Applicants who fail to meet ProTrade's standards will be denied customer status and therefore will be denied access to the System.[11] In general, ProTrade expects to have a sophisticated customer base including professional investors and financial institutions. Each customer will be provided with the System's proprietary software, which the customer may use on a personal computer for the purpose of entering orders and for performing other tasks within the System. ProTrade expects that customers will be able to connect with the System either by: (1) a dial-up telephone line using a modem or (2) a leased line. ProTrade will provide each customer with a unique identification number and a password that will allow access to the System.

4. Operations

The System will keep a file of its customers' outstanding bids and offers sorted by price and time of receipt. The bids and offers will be displayed in a montage or array, and customers will be able to cancel or modify their orders at any time prior to execution. Bids and offers at the same price will be anonymously matched by the System and will be executed on a first-in, first-out basis. The System will accept market orders, limit orders, stop orders, and market if touched orders.

The System will be designed to calculate balances and to settle accounts immediately (or within a few seconds) after every execution. ProTrade states that each order will be individually processed by the System without netting.[12] Settlement will consist of book-entry debits or credits to the customer's account with the customer's account being part of ProTrade's segregated broker-dealer bank account. As a means of protection, the System is designed to reject any order unless the account of the customer that is entering the order has sufficient equity to satisfy the order's premium payment or has the required collateral.

B. System Safeguards

1. Participation Standards

Customers authorized by ProTrade to use the System will be required to meet initial and continuing financial and operational standards, as may be determined by the ProTrade Board of Directors and administered by ProTrade's management.[13] Under these standards, customers will be screened for margin purposes to determine their creditworthiness. Determining factors will be the customers' financial positions and their knowledge and experience in trading options and other derivative products.

ProTrade will require each applicant to disclose, at a minimum, the following information: (1) Trading experience with options and other derivatives, (2) annual income and net worth, (3) history of any account defaults or failures, (4) experience with computers, and (5) existing accounts with other brokers. ProTrade, when it deems it necessary, will obtain credit reports on an applicant. Based on its subjective review of the above criteria, ProTrade may grant or deny customer privileges. Customers also must agree in writing to comply with applicable law and with all of ProTrade's rules. ProTrade will reserve the right to deny access to the System to any person that, among other things, is the subject of a civil injunction or criminal conviction for breach of the laws governing securities or commodities futures.

2. The System's Data Backup

ProTrade reports that it will backup its data daily and that the System itself will have the ability to regenerate electronically all transactions since the previous backup. The System also will be supported by backup hardware that can be put on-line in a matter of seconds.

While customers will be provided with ProTrade's software, the customers will be responsible for their own electronic equipment or hardware. However, if a customer's equipment should break down, the customer could submit orders by telephone to ProTrade where a ProTrade employee will enter the orders.

3. Margin Payment/Collection

Once ProTrade has completed its broker-dealer registration, ProTrade will be subject to Section 7(c) of the Exchange Act, which governs broker-dealer margin requirements.[14] As a consequence of Section 7(c), ProTrade also will be subject to Regulation T of the Board of Governors of the Federal Reserve System (''Federal Reserve System''), which governs credit extended by broker-dealers,[15] and it will be subject to the NASD's rules governing minimum maintenance

[8] ProTrade has stated that it ''will derive most of its revenues from typical 'discount' broker activities, *i.e.*, accepting orders for listed securities on behalf of customers.'' Letter from Joseph M. Zajac, President, ProTrade, to Eugene Lopez, Assistant Director, Division, Commission, at page 2 (October 15, 1993).

[9] As European-style options, no positions may be exercised before the expiration date.

[10] ProTrade has chosen the term ''customers'' for the users of its System, as distinct from participants, subscribers, members, or other similar terms.

[11] At this time, ProTrade has no written standards or criteria for acceptance of customers.

[12] Technically, this described form of post-trade processing is known as ''trade-for-trade'' clearing, the simplest form of clearing, which involves accounting for each trade on a contract by contract basis without netting or at least without the usual types of netting. This form of clearing contrasts with the more sophisticated forms of clearing such as ''daily balance order'' or ''continuous net settlement'' where clearing agencies net each of their participant's trades and each participant's money credits and debits in each security on a daily basis.

[13] At this time, ProTrade has no financial and operational standards for customers authorized to use its System.

[14] 15 U.S.C. 78g (1988).

[15] 12 CFR 220 *et seq.* (1995). *See, esp.*, § 19(f)(2) of Regulation T, 12 CFR 220.19(f)(2), which in general refers a broker-dealer's option margin requirements to the maintenance rules of the broker-dealer's self-regulatory organization (''SRO''). In ProTrade's case, the SRO would be the NASD.

margin for option securities held in customers' accounts.[16]

ProTrade states that it will treat all of its customers as margin customers and will require margin collateral for all short positions. ProTrade indicates that its in-house initial margin requirements will be higher than the NASD's maintenance margin requirements to insure that customers have sufficient funds to cover immediate price moves after they open positions. ProTrade further states that it may reject customer applicants and that it may suspend active customers if they are found not to meet margin standards. ProTrade reports that it has programmed its System to reject any order that would open an option position if the subject account does not have the necessary funds or margin and if an existing account were to become undermargined. ProTrade also states that it may choose to vary customer trading limits, margin requirements, and position limits according to the qualifications of each customer.

ProTrade represents that its System is designed to calculate intraday the margin requirements for each account based upon changes in any bid or asked prices that affect an account. The System reportedly will provide ProTrade with real-time reports of under-margined accounts that will allow prompt margin calls and an enhanced ability to prevent account defaults.

4. Default

In the event that a customer's default becomes imminent, ProTrade states that at its discretion it may choose to prevent the default by assuming the customer's positions itself and by creating a hedged position in the cash market. However, ProTrade does not guarantee that it would undertake such bail-out procedures in the face of an imminent default and states that any such efforts would depend upon the circumstances.

In the event of the actual occurrence of a customer default, ProTrade states that it will guarantee full performance to the contraparties. ProTrade does not plan to create a clearing fund in support of this guarantee.[17] ProTrade reports that it is contemplating the formation of the other risk management facilities such as: (1) A blanket surety bond to be purchased by ProTrade from an insurance company or (2) a transactional insurance fee in the form of a refundable deposit that would be included in the cost of each trade.[18]

III. Public Interest Statement

ProTrade believes that exemption from clearing agency registration is critical to its entering the option securities business. ProTrade maintains that its business plan will provide investors with increased access to over-the-counter options through an integrated electronic transaction and margin system, which ProTrade claims will lower trading costs, create processing efficiencies, ensure more fairness and price transparency, and provide a complete audit trail.

ProTrade asserts that these efficiencies will eliminate the need for paperwork, will reduce the time required for order entry and for post-trade processing, and will shorten settlement cycles. Thus, ProTrade believes that its System will improve the option marketplace.

IV. Specific Request for Comments

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to develop a national clearance and settlement system through, among other things, the registration and regulation of clearing agencies.[19] This statutory scheme contemplates that (1) Clearing agencies will provide clearance and settlement functions consistent with statutory goals and (2) as self-regulatory organizations, clearing agencies will exercise certain regulatory functions in furtherance of other statutory goals.

In fostering the development of a national clearance and settlement system generally and in overseeing clearing agencies in particular, Section 17A authorizes and directs the Commission to promote and facilitate certain goals with due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.[20] Furthermore, Section 17A, as amended by the Market Reform Act of 1990, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.[21]

Section 17A(b)(1) of the Exchange Act[22] authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Historically, the Commission has granted newly registered clearing agencies temporary exemptions from specific statutory requirements imposed by Section 17A in a manner that achieves statutory goals.[23]

The Commission recognizes that clearing agencies pose some safety and soundness concerns to the marketplace. Accordingly, the Division has published standards for clearing agency

[16] ProTrade will be subject to NASD margin requirements on its customers' accounts and specifically the margin requirements for options that are not issued by a registered clearing agency. These requirements are set forth in the NASD *Manual*, Rules of Fair Practice, Art. III, § 30(f)(2)(D)(iii).

[17] As a general rule, the Commission has recommended that a clearing agency have a clearing fund which: (1) Is composed of user contributions based on a formula applicable to all users; (2) is held in cash or highly liquid securities; and (3) is limited in purpose to protecting participants and the clearing agency from participant defaults and from unusual, significant clearing agency losses. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

However, on one occasion the Commission permitted a clearing agency, Delta Government Options Corp. (''Delta'') to register and to operate as a clearing agency without a clearing fund. In Delta's case, the clearing agency's risk management system was deemed adequate, despite the lack of a clearing fund, because Delta had the financial backing of an affiliated corporation and had a substantial credit facility. Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 (order approving Delta's registration as a clearing agency).

[18] A transactional insurance fee differs from margin in several ways. In brief, margin is collateral deposited by a customer with a broker in connection with the specific purchase of specific securities, and margin requirements are governed by the Exchange Act and the rules and regulations thereunder as well as certain rules of the Federal Reserve Board and the appropriate self-regulatory organization. Under ProTrade's contemplated transactional insurance fee program, ProTrade would debit a customer's account a certain amount in connection with each transaction and later credit that amount back to the customer's account upon normal settlement of the transaction. Currently, ProTrade is considering a debit in the vicinity of 5% of the value of each transaction. As stated above, ProTrade has not yet decided if it will implement such a program.

[19] 15 U.S.C. 78q–1 (1988).

[20] For the legislative history of Section 17A of the Exchange Act, refer to Report of Senate Committee on Banking, Housing and Urban Affairs. Securities Acts Amendments of 1975, Report to Accompany S. 249, S. Rep. NO. 75, 94th Cong., 1st Sess. 4–6 (1975).

[21] Market Reform Act of 1990, § 5, amending § 17A(a)(2) of the Exchange Act, 15 U.S.C. 78q–1(a)(2) (1995 Supp.).

[22] 15 U.S.C. 78q–1(b)(1) (1988).

[23] *See, e.g.,* order approving the temporary registration of Government Securities Clearing Corporation (''GSCC'') as a clearing agency where the Commission temporarily exempted GSCC from compliance with the Section 17A(b)(3)(C) requirement of the Exchange Act. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

registration,[24] and it has exercised significant continuing oversight over all aspects of clearing agency operations and functions.[25] The market break of October 1989 and the market break of October 1991 demonstrated the central role of clearing agencies in the U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.[26] In light of the foregoing, the Commission believes that any applicant that requests an exemption from clearing agency registration should meet standards that are substantially similar to those standards required of registered clearing agencies in order to assure that the fundamental goals of Section 17A of the Exchange Act (*i.e.*, safe and sound clearance and settlement) will be achieved. Therefore, commentators are invited to address whether granting the proposed exemption to ProTrade (1) would further the development of a national clearance and settlement system, (2) would promote linked and coordinated clearing facilities (among options, futures, and other financial instruments), and (3) would promote the maintenance of fair competition.

Specifically, ProTrade's application raises the question of whether the establishment of multiple unlinked securities clearing agencies is consistent with Section 17A of the Act. One of the benefits of a single clearing agency is centralized default administration. Conversely, the introduction of multiple options clearing agencies, including options clearing operations that may seem *de minimis* relative to the overall market may have a fragmentation effect that could increase the risks entailed in liquidating defaulting customers. Commentators should discuss applicable law as well as the costs and benefits of single versus multiple clearing facilities for option securities, including whether the risk exposure to individual clearing organizations would be increased by the fragmentation of the clearing function. Commentators also should discuss the effects that stress to the marketplace (*e.g.*, high volume and high volatility) possibly could have on such a multiple clearing agency system.

B. Fair Competition

Section 17A of the Exchange Act requires the Commission, in exercising its authority under that section, to have due regard for the maintenance of fair competition among clearing agencies.[27] In addition, no clearing agency may be registered or granted an exemption from registration, if its rules ''impose any burden on competition not necessary or appropriate in furtherance of the purposes'' of the federal securities laws.[28] Therefore, the Commission must consider an applicant's likely effect on competition in its review of any application for registration as a clearing agency or for an exemption from such registration and must balance any benefits or hindrances to competition against any effects on the other statutory goals.[29]

The Commission invites commentators to address whether an exemption from registration as a clearing agency for ProTrade would result in increased competition among option broker-dealers and among options clearing agencies and whether such competition would, for example, result in the development of improved systems capabilities, the offering of new services, and the lowering of prices to customers. The Commission also invites commentators to address whether the proposal would impose any burden on competition that is inappropriate under the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by February 16, 1995. Such written data, view, and arguments will be considered by the Commission in deciding whether to grant ProTrade's request for an exemption from registration as a clearing agency. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–28. Copies of the application and all written comments will be made available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30907 Filed 12–19–95; 8:45 am]

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[24] Securities Exchange Act Release No. 16900 (June 17, 1980) 45 FR 41920 (order approving standards for clearing agency registration).

[25] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, National Securities Clearance Corporation, The Options Clearing Corporation, Pacific Securities Depository, Philadelphia Depository Trust Company, and Stock Clearing Corporation of Philadelphia).

[26] Division of Market Regulation, *The October 1987* Market Break (February 1988), Chap. 10 (''Clearance and Settlement''), *esp.* pp. 10–48 to 10–56; Division of Market Regulation, *Market Analysis of October 13 and October 16, 1989,* pp. 118–173 (December 1990).

[27] 15 U.S.C. 78q–1(a)(2) (1988).

[28] 15 U.S.C. 78q–1(b)(3)(I) (1988).

[29] *In Bradford National Clearing Corporation v. Securities and Exchange Commission,* 950 F.2d 1085, 1105 (D.C. Cir. 1978), the court said:

[T]o the extent the legislative history provides any guidance to the Commission in taking competitive concerns into consideration in its deliberations on the national clearing system, it merely requires the [Commission] to ''balance'' those concerns against all others that are relevant under the statute.

[30] 17 CFR 200.30–3(a)(16) (1994).

[Release No. 34–36578; File No. SR–Amex–95–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Notes

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 5, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 107B of the Amex Company Guide to provide greater flexibility for the listing of Equity-Linked Notes (''ELNs'').

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 1993 and December 13, 1993, the SEC approved amendments to Section 107 of the Amex Company Guide (''Section 107'') to provide for the listing and trading of ELNs.[1] ELNs are intermediate term, nonconvertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. common stock (''linked security''). In order to list an ELNs product, Section 107B currently requires the linked security to meet one of the following criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	20 million shares.
$500 million	and	80 million shares.

Amex now proposes to amend Section 107(B) to provide for greater flexibility in the listing criteria for ELNs. The proposed rule change will lower the trading volume requirements criteria such that ELNs may be listed where the linked security meets one of these revised criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	10 million shares.
$500 million	and	15 million shares.

The Exchange believes this revision strikes an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the markets for the underlying linked security in view of the requirements that the linked security have a large minimum market capitalization and a fairly large trading volume over the preceding twelve months. The Exchange will continue to require that the issuer have a minimum tangible net worth of $150 million and that the total issue price of the ELNs combined with all of the issuers's other listed ELNs shall not be greater than 25% of the issuer's tangible net worth at the time of issuance. The rule change will also delete the current provision of the rule that allows the Exchange to list ELNs that do not meet these criteria if the Division of Market Regulation of the SEC concurs.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–48 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30911 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release Nos. 32345 (May 20, 1993) and 33328 (Dec. 13, 1993).

[2] 17 CFR 200.30–3(a)(12)(1994).

[Release No. 34–36585; File No. SR–Amex–95–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Gratuity Fund

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Admission of Members and Member Organizations section of its rules to require that all persons who are entitled to make an election to either ''opt-in'' or ''opt-out'' of participation in the

Gratuity Fund must make such an election by March 29, 1996.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 16, 1995, the Commission approved a number of changes to the Amex Constitution and rules regarding membership structure and requirements, including significant changes to the Gratuity Fund.[1] The changes with respect to the Gratuity Fund increased the benefit to $125,000, subject to a ''phase-in'' schedule for new Participants, included an ''active'' requirement for participation, and expanded the categories of individuals who are included in the Gratuity Fund to include both regular and options principal member lessees, as well as options principal members and some lessors.

The changes also included a grandfathering provision with respect to the Gratuity Fund revisions.[2] All regular members and existing regular member lessors were ''grandfathered'' with respect to the ''active'' requirement (*i.e.*, they would be deemed to have met it, even if they were never active for a two-year period). Individuals who owned options principal memberships on May 16, 1995 were given a one-time opportunity to elect to ''opt-in'' or ''opt-out'' of the Gratuity Fund, and those who choose to ''opt-in'' are grandfathered with respect to the ''active'' requirement as well. An election to ''opt-out'' is irrevocable for the rest of the person's life, unless he or she subsequently buys a regular membership. In addition, those individuals who were either regular or options principal member lessees on May 16, 1995 have the right to ''opt-out'' of the Gratuity Fund for the duration of their lease (including any renewals).[3]

All individuals who have a right to ''opt-in'' or ''opt-out'' of the Gratuity Fund have received extensive written communications from the Exchange's Membership Services Department requesting that such individuals indicate their election thereof on the appropriate form(s). In addition, for a total of three weeks, staff members from the Membership Services Department were stationed in the Exchange lobby to answer questions and distribute forms and information, and signs have been posted on the trading floor alerting the affected membership of the need to notify the staff of their election. Notwithstanding this effort, as of November 7, 1995, almost 40% of eligible individuals[4] had not completed the necessary paperwork or indicated their election to the staff.

In order to efficiently administer the Gratuity Fund it is imperative that each eligible individual's status in this regard be definitively resolved. The lack of complete information has resulted in significant record keeping problems in terms of determining who is subject to an assessment upon a Participant's death, as well as the amount that should be assessed to other Participants.[5] Moreover, interpretative difficulties are presented by the death of an individual who has not yet made an election.

Accordingly, the Exchange is proposing to amend the Admission of Members and Member Organizations section of its Rules to require that all individuals who have a right to elect to ''opt-in'' or ''opt-out'' of the Gratuity Fund must make such election by March 29, 1996. An individual who does not make an election by that date will be conclusively deemed to have elected to ''opt-out'' of participation in the Gratuity Fund. This date has been selected to give the Exchange a period of time during which persons can receive ample warning of the new deadline.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from December 7, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(e)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

[1] See Securities Exchange Act Release No. 35723 (May 16, 1995); 60 FR 27353 (May 23, 1995) (File No. SR–AMEX–95–08).

[2] See Amex Constitution, Article IX, Section 23.

[3] New leases require lessee participation in the Gratuity Fund.

[4] As of November 7, 1995, 452 individuals had not completed the necessary paperwork or indicated their election to the staff. Subsequently, as a result of a concerted drive, an additional 216 individuals have indicated their election, leaving 236 individuals who have not done so as of December 7, 1995.

[5] Because the pool of Participants is now variable, the amount of each assessment is determined by dividing $125,000 by the number of Participants.

[6] The Exchange will take the following steps to notify affected persons of the deadline: A certified letter will be sent to the latest address for each such individual in the files of the Exchange's Membership Services Department, and if necessary a second follow-up certified letter will be sent to such address. In addition, unless an individual has previously responded to such written notification, if such person does business on the Floor of the Exchange and can be found on the Floor of the Exchange, an Exchange staff member will personally speak to the individual to inform him or her of the deadline. For all other individuals who have not responded to a written notification, to the extent the files of the Membership Services Department contain a telephone number for such individual, an Exchange staff member will place one telephone call to such number to attempt to orally notify the individual of the deadline.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(6).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–49 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30856 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36588; File No. SR–CBOE–95–63]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Adoption of Rule 9.24 and an Interpretation With Respect to Proposed Rule 9.24

December 13, 1995.

I. Introduction

On October 19, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 9.24 and to add Interpretation and Policy .01 thereunder with respect to the meaning and administration of proposed Rule 9.24.

The proposed rule change appeared in the Federal Register on November 9, 1995.[3] No comments were received on the proposed rule change. This order approves the CBOE's proposal.

II. Description

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list. The CBOE's proposal would also add an interpretation concerning the meaning and administration of proposed Rule 9.24 as well as serve as a reminder [4] that members and member organizations are subject to compliance with the relevant Federal Communications Commission (''FCC'') and Commission rules relating to telemarketing practices.[5]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. Proposed Rule 9.24 and the interpretation thereunder require a specific practice, the maintenance of a do-not-call list. The purpose of maintaining such a list is to prevent members and member organizations from engaging in such manipulative acts as persistently calling investors who have expressed a desire not to receive telephone solicitations.

The Commission also believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to protect investors and the public interest. Proposed Rule 9.24 and the interpretation thereunder protect investors and the public interest by enforcing members' and member organizations' compliance with investors' desire not to receive such calls. In addition, the proposed interpretation reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to adopt a new rule concerning telephone solicitation and record-keeping is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–95–63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30909 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36590; File No. SR–CHX–95–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Agency Crosses Between the Disseminated Exchange Market

December 13, 1995.

On October 11, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the execution of agency cross transactions at a price between the disseminated Exchange market.[3] On October 17, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36455 (November 3, 1995), 60 FR 56624 (November 9, 1995).

[4] The Commission notes that the CBOE intends to include this Interpretation in a Circular that will be distributed to members and member organizations.

[5] Pursuant to the Telephone Consumer Protection Act (1991), the FCC developed rules to protect the rights of telephone consumers while allowing legitimate telemarketing practices. The FCC rules include a requirement that a person or entity making telephone solicitations must maintain a do-not-call list. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act (1994) (''Prevention Act''), requires the Federal Trade Commission (''FTC'') to adopt rules on abusive cold calling. The Prevention Act also requires the Commission to engage in its own rulemaking or, alternatively, to require the self-regulatory organizations to promulgate telemarketing rules consistent with the legislation.

[6] 15 U.S.C. 78f(b) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In a cross transaction, a member or member organization that holds an order to buy and an order to sell an equivalent amount of the same security executes the orders against each other.

[4] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Team Leader, SEC, dated

Continued

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36432 (Oct. 27, 1995), 60 FR 55873 (Nov. 3, 1995). No comments were received on the proposal.

Currently, Interpretation .01 to CHX Rule 23, Article XX, requires a CHX specialist to refrain from interfering with a floor-brokered agency cross [5] of 10,000 shares or greater that is to be effected at a price between the disseminated Exchange market.[6] The exchange proposes to amend this rule to require a CHX specialist to refrain from interfering with all floor-brokered agency crosses, *regardless of size*, at a cross price between the disseminated Exchange market. Under the Exchange's proposal, the specialist will continue to be obligated to satisfy all orders on the book with priority at the cross price.[7] Moreover, the proposed rule change will continue to permit the specialist to participate at the cross price if the specialist is willing to provide one side of the cross with a better price or if the member presenting the cross previously solicited the specialist's assistance in consummating any part of the transaction.

The Exchange believes that the proposed rule change will increase the possibility of immediate execution for agency crosses on the Exchange, which in turn will improve the Exchange's ability to compete for order flow and enhance the depth and liquidity of the Exchange market. Moreover, the Exchange believes that the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the Exchange and the proprietary trading operations of Exchange members and member organizations, including specialists.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) [8] and Section 11(a).[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is not inconsistent with the traditional auction market principle of customer priority as embodied in Section 11(a) of the Act.

The Commission believes that the proposed rule change should further competition among the exchanges,[10] as well as between the exchanges and other markets, and should increase the opportunities for the efficient execution of cross transactions without operating in a manner inconsistent with traditional auction market principles. The proposal only restricts specialists from interfering with crosses between the disseminated Exchange market under certain circumstances and continues to allow another member, including an order for the principal account of a member, to break up the cross.

The Commission believes that the proposal is not inconsistent with the auction market principles of time and price priority. As before, a member effecting a cross transaction at the prevailing bid or offer will continue to be required to obtain priority over all existing limit orders at that price and specialists will continue to be required to fill limit orders at the cross price, which have not been displayed in the quote. Moreover, the Commission believes that the proposal does not alter the safeguards provided in the current rule, which ensure that public customers are not disadvantaged. For example, the Commission notes that the proposed rule change does not change the opportunity for customer orders to receive price improvement: the specialist will continue to be allowed to participate at a better price.

Finally, the Commission does not believe that the proposed rule change will significantly reduce order interaction on the floor of the Exchange. Only a CHX specialist who does not have a displayed bid or offer at the cross price must refrain from participating in a cross transaction at that price. The proposed rule change does not affect the ability of specialists to participate at a better price or the ability of other interest in the trading crowd to participate. The Commission does not expect the proposed rule change to substantially impair price discovery or market liquidity.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–95–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30910 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

October 13, 1995. Amendment No. 1 corrected the text of Exhibit A to the filing, which sets forth the text of the proposed rule change, by adding a sentence that had been inadvertently omitted from Exhibit A as initially filed.

[5] For purposes of this rule, an ''agency cross'' is defined as a cross where neither the order to buy or sell is for the account of any member or member organization.

[6] *See* Securities Exchange Act Release No. 33708 (Mar. 3, 1994), 59 FR 11339 (File No. SR–MSE–93–05) (approving a proposed rule change to require that the CHX specialist refrain from interfering with a floor-brokered agency cross of 10,000 share or more at a cross price between the disseminated Exchange market).

[7] This requirement is to ensure that in situations where a limit order on the book has not been displayed in the quote, the specialist would be obligated to satisfy such limit orders with priority at the cross price.

[8] 15 U.S.C. § 78f(b).

[9] 15 U.S.C. § 78k(a).

[10] Several exchanges have similar rules prohibiting specialists from interfering with agency crosses when the cross is at a price inside the disseminated exchange market without regard to size. *See, e.g.*, Pacific Stock Exchange Rule 5.14(b) and Philadelphia Stock Exchange Rule 126.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–36581; File No. SR–NYSE–95–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Debt Securities

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 29, 1995, the New York Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its listing standards for Equity-Linked Debt Securities (''ELDS''). These listing standards are contained in Para. 703.21 of its Listed Company Manual. The amendments would allow the Exchange to list ELDS on securities, as described below, that have a market capitalization of $1.5 billion or $500 million, if such securities have annual trading volume of 10 million and 15 million shares, respectively.

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 NYSE 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

ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.[1] The purpose of the proposed rule change is to amend the trading volume criteria for the linked security, that is, the security on which the value of the ELDS is based. Currently, under Section 703.21 of the Listed Company Manual, in order to list an ELDS product, the linked security must meet one of the following criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	20 million shares.
$500 million	and	80 million shares.

The proposed rule change will lower the trading volume requirements criteria such that an ELDS may be listed provided the linked security meets one of these revised criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	10 million shares.
$500 million	and	15 million shares.

The Exchange believes the new criteria will provide it with greater flexibility to list these types of securities. The rule change will also delete the current provision of the rule that allows the Exchange to list ELDS that do not meet these criteria if the Division of Market Regulation of the SEC concurs. With the increased flexibility that the new numerical listing criteria will supply, it will no longer be necessary to conduct such a case-by-case review of ELDS listings.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–39 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30912 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 33468 (Jan. 13, 1994). These listing standards were subsequently revised in Securities Exchange Act Release Nos. 33841 (March 31, 1994) and 34985 (Nov. 18, 1995).

[2] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36577; File No. SR-Phlx–95–61]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Reduction of the Value of the Phlx National Over-the-Counter Index

December 12, 1995.

I. Introduction

On September 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the value of the Phlx's National Over-the-Counter Index (''Index'') option (''XOC'') to one-half of its present value.[3] The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks trading over-the-counter. The other contract

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The Exchange will accomplish this reduction in value by doubling the divisor used in calculating the Index.

specifications for the XOC remain unchanged.

The proposed rule change appeared in the Federal Register on November 14, 1995.[4] No letters were received in response to the Commission's solicitation for comment on the proposed rule filing.[5] This order approves the Phlx's proposal.

II. Background and Description

The Phlx began trading the XOC in 1985.[6] The Index was created with a value of 150 on its base date of September 28, 1984, which rose to 548 in June 1994, and to 700 in June 1995. On September 14, 1995, the Index value was 868. Thus, the Index value has increased significantly, especially during the last year. Consequently, the premium for XOC options has also risen.

As a result, the Phlx proposes to conduct a ''two-for-one split'' of the Index, such that the value will be reduced by one-half. In order to account for the split, the number of outstanding XOC contracts will be doubled, such that for each XOC contract currently held, the holder will receive two contracts at the reduced value, with a strike price of one-half the original strike price. For instance, the holder of an XOC 800 call will receive two XOC 400 calls. In addition, the Phlx will double to the position and exercise limits applicable to the XOC, from 17,000 contracts to 34,000 contracts until the last expiration then trading, which is the June 1996 expiration.[7] According to the Phlx, this procedure is similar to that employed with equity options when the underlying security is subject to a two-for-one stock split, as well as that used for the recent split of the Phlx's Semiconductor Index.[8]

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower Index value, pursuant to Phlx Rule 1101A. The Phlx will announce the effective date by way of an Exchange memorandum to its membership, which will also serve as notice of the strike price and position limit changes.[9]

According to the Phlx, the purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, according to the Phlx, a near-term, at-the-money call option series currently trades at approximately $1,200 per contract. After the Index split, the same option series (once adjusted), with all else remaining equal, could trade at approximately $600 per contract. Thus, while certain investors and traders may currently be impeded from trading at such levels, a reduced Index value should encourage additional investor interest.

The Phlx believes the XOC options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying over-the-counter stocks. By reducing the value of the Index such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. According to the Phlx, this should attract additional investors, and, in turn, create a more active and liquid trading environment.

III. Summary of Comments

The Phlx received one comment letter opposing the proposed rule change from a financial planner at Smith Barney Shearson.[10] The issues raised therein and the Phlx's response thereto [11] are discussed below.

According to the commenter, one of the primary inducements to trading the Index is its volatility. If the Index is split in half, however, the commenter believes that investors will be unnecessarily forced to trade twice as many contracts in order to maintain their current degree of leverage. In response, the Phlx stated that a lower priced, less volatile Index will better serve the needs of investors as the Exchange will be able to more timely update quotes, particularly during periods of active market conditions.

The commenter also opposes the proposed rule change because he believes that splitting the Index will reduce its value to an inappropriately low level. In this regard, the commenter suggests alternative split levels (*e.g.*, a 4 for 3 split, or a 3 for 2 split) as a less problematic approach. In this manner, according to the commenter, the Index will retain a greater percentage of its current value. The Phlx responded that splitting the Index in a manner other than two-for-one would result in unnecessary calculations and adjustments to the divisor, position limits, and strike prices and would thereby create investor confusion and excessive system demands.

Finally, the commenter suggests that the Exchange postpone the splitting of the Index to provide investors with a reasonable amount of time to adjust their positions as a result of the proposed rule change. In this regard, the Commission notes that to avoid investor confusion the Phlx has stated that it intends to provide market participants with adequate notice of the change to the Index value.[12]

IV. Discussion

After careful consideration of the comment letter and the Phlx's response thereto, the Commission has decided to approve the proposed rule change. For the reasons discussed below, the Commmission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[13] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement to protect investors and the public interest and to remove impediments to a free and open securities market. By reducing the value of the Index, the Commission believes that a broader range of investors will be provided with a means of hedging their exposure to the market risk associated with the underlying over-the-counter stocks. Similarly, the Commission believes that reducing the value of the Index could help attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are identical to the

[4] See Securities Exchange Act release No. 36460 (November 6, 1995), 60 FR 57256 (November 14, 1995).

[5] The Commission notes, however, that the Phlx forwarded to the Commission one comment letter it received prior to filing this rule proposal. This letter and the Phlx's response is discussed below. See *infra* note 10 and accompanying discussion.

[6] See Securities Exchange Act Release Nos. 21576 (January 18, 1985), 50 FR 3445 (January 24, 1985); and 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (File No. SR–Phlx–84–28).

[7] Separately, the Exchange is proposing to increase the XOC position and exercise limits to 25,000 contracts. *See* SR–Phlx–95–38.

[8] See Securities Exchange Act Release No. 35999 (July 20, 1995), 60 FR 38387 (July 26, 1995) (File No. SR–Phlx–95–41).

[9] In this regard, the Commission notes that in a memorandum dated November 20, 1995, the Phlx provided notice to its members and member organizations of its intention to reduce the value of the XOC by one-half.

[10] See letter from Barry J. Weisberg, Vice President, Smith Barney Shearson, Inc., to Andy Kolinsky, Vice President, Phlx, dated August 1, 1995. The Commission notes that the commenter also raised other concerns regarding the trading of the XOC unrelated to the rule proposal which are not discussed herein.

[11] See letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Barry J. Weisberg, Vice President, Smith Barney Shearson, Inc., dated November 20, 1995.

[12] See supra note 9.

[13] 15 U.S.C. 78f(b) (1988).

approach used to adjust outstanding options on stocks that have undergone a two-for-one stock split.

The Commission believes that doubling the Index's divisor will not have an adverse market impact or make trading in XOC options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner (except for the change in the divisor). The Phlx's surveillance procedures will also remain the same.

Lastly, for the reasons discussed below, the Commission also believes that the commenter's criticisms of the rule proposal have been adequately addressed by the Phlx's response. First, issues regarding the appropriate value of an index are business decisions typically left to the discretion of an exchange, particularly in the absence of Commission concerns regarding potential manipulation, investor confusion, or other regulatory concerns. Second, the Commission believes that the Exchange's proposal to adjust the Index in a manner similar to a two-for-one stock split provides a simple, orderly, and efficient means to effect the adjustment. Third, the Commission believes that the Phlx will be able to provide adequate notice to market participants regarding to change to the Index value prior to its implementation. As noted above,[14] the Phlx has already indicated its intent, subject to Commission approval, to adjust the Index value after the December expiration.

V. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to reduce the value of the Index to one-half of its present value is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–95–61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30855 Filed 12–19–95; 8:45 am]

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[14] See supra note 9.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21600; File No. 812–9526]

Connecticut General Life Insurance Company, et al.

December 13, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Connecticut General Life Insurance Company (''CG Life''), CG Variable Life Insurance Separate Account II (the ''Account''), and CIGNA Financial Advisors, Inc. (''CIGNA'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applciants seek an order to permit them to deduct a charge that is reasonable in relation to CG Life's increased federal income tax burden resulting from the receipt by CG Life of premiums in connection with certain flexible premium variable life insurance contracts issued by CG Life, the Account and any other separate account established in the future by CG Life (the ''Other Accounts,'' collectively, with the Account, the ''Accounts'').

FILING DATE: The application was filed on March 13, 1995 and amended and restated on August 1, 1995 and December 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Robert A. Picarello, Esq., Connecticut General Life Insurance Company, 900 Cottage Grove Road, Hartford, Connecticut 06152.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. CG Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of CIGNA Holdings, Inc., which is, in turn, wholly owned by CIGNA Corporation. The Account, established by CG Life on July 6, 1994 pursuant to Connecticut law, is registered with the Commission as a unit investment trust. The assets of the Account are divided among subaccounts, each of which will invest in shares of one of five registered investment companies (the ''Funds''). The funds currently offer sixteen portfolios for investment. Each of the Funds is an open-end diversified management investment company under the 1940 Act. The Other Accounts will be organized as unit investment trusts and will file registration statements under the 1940 Act and the Securities Act of 1933.

2. CIGNA will serve as the distributor and the principal underwriter of the Existing Contracts, described below. Applicants state that they expect CIGNA also to serve as the distributor and the principal underwriter of the Future Contracts, described below. CIGNA is a wholly owned subsidiary of Connecticut General Corporation, CIGNA, which is, in turn, a wholly owned subsidary of CIGNA Corporation. CIGNA a member of the National Association of Securities Dealers, Inc., is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and as an investment adviser under the Investment Advisers Act of 1940.

3. The Existing Contracts are flexible premium variable life insurance policies, and will be issued on a group or individual basis. The Future Contracts will be substantially similar in all material respects to the Existing Contracts (the Future Contracts, collectively, with the Existing Contracts, the ''Contracts''). The Contracts will be issued in reliance on Rule 6e–3(T)(b)(13)(i)(A) under the 1940 Act. Applicants state that CG Life will deduct 1.15% of each premium payment made under the Contracts to cover CG Life's estimated cost for the federal income tax treatment of deferred acquisition costs.

4. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the ''Code'') by, among other things, enacting Section 848 thereof.

Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

5. The amount of expenses that must be capitalized and amortized over ten years rather than deducted in the year incurred is based solely upon ''net premiums'' received in connection with certain types of insurance contracts. Section 848 of the Code defines ''net premium'' for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

6. The amount of general expenses that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants state that the Contracts are ''specified insurance contracts'' that fall into the category of life insurance contracts, and under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

7. Applicants state that CG Life's increased tax burden resulting from section 848 may be quantified as follows. For each $10,000 of net premiums received by CG Life under the Contracts in a given year, section 848 requires CG Life to capitalize $770 (7.7% of $10,000), and $38.50 (one-half year's portion of the ten year amortization) of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35%, and results in an increase in tax for the current year of $256.03 (.35×$731.50). This increase will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth year).

8. In the business judgment of CG Life, a discount rate of 10% is appropriate for use in calculating the present value of CG Life's future tax deductions resulting from the amortization described above. Applicants state that CG Life seeks an after tax rate of return on the investment of its capital in excess of 10%. To the extent that capital must be used by CG Life to meet its increased federal tax burden under section 848 resulting from the receipt of premiums, such capital is not available to CG Life for investment. Thus, Applicants contend, the cost of capital used to satisfy CG Life's increased federal income tax burden under section 848 is, in essence, CG Life's after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation.

9. Applicants submit that, to the extent that the 10% discount rate is lower than CG Life's actual targeted rate of return, a measure of comfort is provided that the calculation of CG Life's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax or the targeted after tax rate of return applicable to CG Life is reduced. CG Life undertakes to monitor the tax burden imposed on it and to reduce the charge to the extent of any significant decrease in the tax burden.

10. In determining the after tax rate of return used in arriving at the 10% discount rate, Applicants state that CG Life considered several factors, including: historical capital costs; market interest rates; CG Life's anticipated long term growth rate; the risk level for this type of business; and inflation. CG Life represents that such factors are appropriate factors to consider in determining CG Life's cost of capital. Applicants state that CG Life projects its future growth rate based on its sales projections, the current interest rates, the inflation rate, and the amount of capital that CG Life can provide to support such growth. CG Life then uses the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Applicants state the CG Life seeks to maintain a ratio of capital to assets that is established based on CG Life's judgment of the risk represented by various components of CG Life's assets and liabilities. Applicants state that maintaining the ratio of capital to assets is critical to offering competitively prices products and, as to CG Life, to maintaining a competitive rating from various rating agencies. Consequently, Applicants state that CG Life's capital should grow at least at the same rate as do CG Life's assets.

11. Applying the 10% discount rate, and assuming a 35% corporate income tax rate, the present value of the tax effect of the increased deductions allowable in the following ten years amounts to a federal income tax savings of $160.40. Thus, the present value of the increased tax burden resulting from the effect of section 848 on each $10,000 of net premiums received under the Contracts is $95.63, *i.e.*, $256.03 minus $160.40 or 1.47%.

12. State premium taxes are deductible in computing federal income taxes. Thus, CG Life does not incur incremental federal income tax when it passes on state premium taxes to owners of the Contracts. Conversely, federal income taxes are not deductible in computing CG Life's federal income taxes. To compensate CG Life fully for the impact of section 848, therefore, it would be necessary to allow CG Life to impose in additional charge that would make CG Life whole not only for the $95.63 additional federal income tax burden attributable to section 848 but also for the federal income tax on the additional $95.63 itself. This federal income tax can be determined by dividing $95.63 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.46%.

13. Based on prior experience, CG Life expects that all of its current and future deductions will be fully taken. It is the judgment of CG Life that a charge of 1.15% would reimburse CG Life for the impact of section 848 on CG Life's federal income tax liabilities. Applicants represent that the charge to be deducted by CG Life pursuant to the relief requested is reasonably related to the increased federal income tax burden under section 848, taking into account that benefit to CG Life of the amortization permitted by section 848, and the use by CG Life of a discount rate of 10% in computing the future deductions resulting from such amortization, such rate being the equivalent of CG Life's cost of capital.

14. CG Life asserts that although a charge of 1.15% of premium payments would reimburse CG Life's for the impact of section 848 (as currently written) on CG Life's federal income tax liabilities, it will have to increase this charge if any future change in, or interpretation of section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicant's Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c)

exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt by such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) under the 1940 Act to permit the proposed deductions to be treated as other than ''sales load'' for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the ''deduction of premium taxes imposed by any state or other governmental entity.''

4. Rule 6e–3(T)(c)(4) defines ''sales load'' charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including ''a deduction for and approximately equal to state premium taxes.''

5. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's tax burden attributable to premiums received. Thus, Applicants submit that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants contend that the requested exemptions from Rule 6e–3(T)(c)(4) are necessary in connection with Applicant's reliance on certain provisions of Rule 6e–3(T)(b)(13), and particularly on subparagraph (b)(13)(i) of the Rule, which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) only if they meet the Rule's alternative limitations on sales load as defined in Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of ''sales load'' in Rule 6e–3(T)(c)(4), Applicants state that they have found no public policy reason for including these deductions in ''sales load.''

7. The public policy that underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of ''sales load'' in Rule 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of ''sales load'' found in the Rule supports this analysis. Applicants state that the Commission's intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of ''sales load'' in Section 2(a)(35) for their efficacy, the percentage limits in Rule 6e–3(T)(b)(13)(i) depend on Rule 6e–3(T)(c)(4), which does not depart, in principle, from Section 2(a)(35).

9. Section 2(a)(35) excludes deductions from premiums for ''issue taxes'' from the definition of ''sales load'' under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rule 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are ''not properly chargeable to sales or promotional activities.'' Applicants contend that this suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate CG Life for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as ''sales load'' is consistent with the policies of the 1940 Act.

10. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Contract to be issued through one of the Accounts. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

11. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for CG Life and Other Accounts to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of CG Life and the Accounts to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If CG Life and the Other Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for CG Life and the Accounts.

Conditions for Relief

1. Applicants represent that CG Life will monitor the reasonableness of the charge to be deducted by CG Life pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums; [1] (ii) the reasonableness of the after tax rate of return that is used in calculating such charge and the relationship that such charge has to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder, to permit CG Life to deduct 1.15% of premium payments under the Contracts, meet the standards set forth in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

[1] Applicants represent that they will amend the application during the Notice period to include this condition as set forth herein.

[Investment Company Act Release No. 21597; 812–9476]

The Diversified Investors Funds Group, et al.; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Diversified Investors Funds Group (''Diversified Fund''); Diversified Investors Portfolios (''Diversified Portfolios''); Diversified Investment Advisors, Inc. (''Diversified''), on behalf of itself and each open-end management investment company or series thereof organized in the future (the ''Future Funds'') which is a member of the same ''group of investment companies'' as defined in rule 11a–3 under the Act; and Diversified Investors Securities Corp. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create a ''fund of funds'' that initially will have three portfolios. Each portfolio would allocate substantially all of its assets among the series of Diversified Fund or of the Future Funds (each such series and Future Fund is referred to individually as an ''Underlying Spoke,'' and all such series and Future Funds, collectively, as the ''Underlying Spokes'') without regard to the percentage limitations of section 12(d)(1). The Underlying Spokes, in turn, will invest in a corresponding series of Diversified Portfolios or of a Future Fund (each such series and Future Fund is referred to individually as an ''Underlying Hub,'' and all such series and Future Funds, collectively, as the ''Underlying Hubs''). The requested order also would permit certain affiliated joint transactions in accordance with section 17(d) of the Act and rule 17d–1.

FILING DATES: The application was filed on February 6, 1995, and amended and restated on June 2, 1995, July 12, 1995, and December 12, 1995.

HEARING OR NOTIFICATION OF HEARINGS: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Diversified Fund is organized as a Massachusetts business trust. Diversified Portfolios is organized as a trust under the laws of the State of New York. Each of Diversified Fund and Diversified Portfolios is registered as an open–end management investment company under the Act. Diversified Fund currently consists of eight separate series and Diversified Portfolios currently consists of nine separate series.

2. Diversified is a registered investment adviser under the Investment Advisers Act of 1940. Diversified is an indirect, wholly-owned subsidiary of AEGON USA, Inc., a financial services holding company whose primary emphasis is life and health insurance and annuity and investment products. AEGON USA, Inc. is an indirect, wholly-owned subsidiary of AEGON nv, a Netherlands corporation which is a publicly traded international insurance group. Diversified currently is the investment manager for Diversified Portfolios and acts as administrator and transfer agent for Diversified Fund. Each Underlying Spoke organized in the future will be administered by Diversified, and each Underlying Hub organizer in the future will be advised by Diversified. Diversified Investors Securities Corp.

(the ''Distributor''), a Delaware corporation, acts as distributor for Diversified Fund.

3. Applicants propose to organize The Diversified Investors Strategic Allocation Funds (''Strategic Fund''), which will operate as a ''fund of funds.'' Strategic Fund will be organized as a Massachusetts business trust, and, subject to the receipt of the requested order, will be registered under the Act as a non-diversified, open-end, management investment company. Strategic Fund initially will have three series or portfolios, identified as the Aggressive Portfolio, the Moderate Portfolio, and the Conservative Portfolio (collectively referred to as the ''Portfolios,'' or individually as a ''Portfolio''). Each Portfolio will invest all of its investable assets in shares of the Underlying Spokes and will allocate and reallocate its assets among the Underlying Spokes. Investments also may be made in money market investments for cash management and temporary defensive purposes.

4. The Underlying Spokes are, or will be, ''feeder'' (or ''spoke'') funds in a ''master-feeder'' (or ''Hub and Spoke®'')[1] structure in which there are other feeders investing in the master funds. Each of the existing Underlying Spokes invests, and each future Underlying Spoke will invest, all of its investable assets in an Underlying Hub having the same investment objective and policies as the Underlying Spoke. Each current Underlying Hub has one or more sub-advisers who are responsible for its day-to-day investment selections. In addition to the Underlying Spokes, each of the existing Underlying Hubs has a number of additional ''spokes,'' including a bank sponsored collective trust, insurance company separate accounts established in respect of variable annuity contracts which are registered as unit investment trusts, and non-registered insurance company separate accounts. In the future, each Underlying Hub may sell interests to other eligible entities to the extent permitted by applicable law.

5. Allocations of a Portfolio's assets among shares of the Underlying Spokes will be made consistent with its investment objective. For example, it is anticipated that the Aggressive Portfolio would, under normal circumstances, invest substantially all of its assets in Underlying Spokes/Hubs that invest in equity securities. The Underlying Spokes/Hubs in which each Portfolio may invest will be described in the Portfolio's prospectus. In addition, the prospectus will disclose the general ranges for investment by the Portfolio in each type of Underlying Spoke (i.e., equity, fixed-income, and money market), and in each specific Underlying Spoke. Shareholders will receive disclosure of any changes in the identity of the Underlying Spokes in which the Portfolio may invest (e.g., if a new Underlying Spoke is included) or any changes in the investment ranges. Allocations of a Portfolio's assets among Underlying Spokes initially will be made, and subsequently adjusted, consistent with quantitative and other market and economic analyses administered by Diversified in its role as investment manager to Strategic Fund.

6. It currently is contemplated that Strategic Fund will be sold without a front-end or deferred sales charge, and will not have a rule 12b–1 distribution plan. The only direct expense payable by Strategic Fund will be an asset allocation and administrative fee, which initially will be at a rate of .20% per annum of average daily net assets for each Portfolio.[2] In return for the fee, Diversified will furnish Strategic Fund with all operating and administrative services and will pay all of the operating expenses (e.g., the fees and expenses of Strategic Fund's independent trustees and the minimal fees and expenses associated with the preparation and audit of its financial statements, but not portfolio brokerage expenses) for Strategic Fund.

7. Each existing Underlying Spoke and Underlying Hub is, and, subject to the right to institute such fees and charges to the extent permitted in condition 5 below, each future Underlying Spoke and Underlying Hub will be, sold without a front-end or deferred sales charge. The shareholders of Strategic Fund, however will pay indirectly their proportional share of the expenses of each Underlying Spoke in which Strategic Fund invests. These expenses include (a) an administration fee payable to Diversified, which covers, among other things, the expenses of transfer agency services, (b) rule 12b–1 fees, which are payable by the existing Underlying Spokes at a maximum rate of .25% per annum of net assets, and (c) other customary expenses of registered investment companies, primarily consisting of compensation to independent trustees, insurance premiums, fees and expenses of independent auditors and legal counsel, and accounting expenses. The expenses also include the Underlying Spokes proportional share of the expenses of the Underlying Hubs in which they invest, which include advisory fees and other customary expenses of registered investment companies.

8. Applicants may, although they do not contemplate doing so in the near future, enter into a special servicing agreement (the ''Servicing Agreement''), pursuant to which the Distributor will provide all distribution and distribution-related services relating to Strategic Fund. The Servicing Agreement would provide that a portion of each Underlying Spoke's rule 12b–1 fees attributable to shares held by Strategic Fund may be used to reimburse the Distributor for expenses incurred in rendering distribution and distribution-related services to the Portfolios. Each Underlying Spoke thus would be permitted to pay rule 12b–1 fees in respect of distribution of shares of a Portfolio, but only to the extent that the Portfolio has invested in the Underlying Spoke.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit Strategic Fund to invest in the Underlying Spokes in excess of the percentage limitations of section 12(d)(1).

[1] Hub and Spoke® is a registered service mark of Signature Financial Group, Inc.

[2] Because Strategic Fund under normal circumstances will invest exclusively in shares of the Underlying Spokes, it is not anticipated that it will bear any portfolio brokerage expenses except those associated with the short-term investment of cash, if any.

3. Applicants propose to organize Strategic Fund to provide investors with a simple means of investing in a diversified mutual fund investment program tailored by investment professionals to different investment goals and risk tolerances. Applicants believe that Strategic Fund will provide an alternative to other programs that investors turn to for diversification and asset allocation advice, such as wrap fee programs using mutual funds and inter-complex funds of funds.

4. Section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure which may be confusing to investors.

5. Applicants believe that Strategic Fund is structured in a manner consistent with the intent of section 12(d)(1) and which avoids the abuses intended to be prevented by that section. Applicants state that the proposed structure of Strategic Fund is very different from the structure of the investment companies whose practices led to the adoption of section 12(d)(1) and its amendment in 1970. Strategic Fund and the Underlying Spokes and the Underlying Hubs are part of the same group of investment companies, and each of these funds is or will be a registered investment company subject to the protections of the Act. In addition, because Diversified will be the investment adviser to Strategic Fund and each of the Underlying Hubs, applicants assert that it will be obligated to treat each fund fairly and impartially in the exercise of its fiduciary obligations. Diversified also will be subject to its fiduciary obligation to avoid self-dealing, therefore, it may not enter into transactions solely for the purpose of benefitting Diversified at the expense of Strategic Fund or any of the Underlying Hubs. Finally, applicants argue that Diversified's self-interest will prompt it to maximize benefits to all shareholders, and not disrupt the operations of Strategic Fund or any of the Underlying Spokes or Underlying Hubs.

6. Applicants believe that, although the proposed structure of Strategic Fund could be deemed to involve three levels of fees rather than two levels, this does not change the analysis with respect to the requested relief. Applicants assert that the structure of the Underlying Spokes and the Underlying Hubs does not create a layering of fees of the type that section 12(d)(1) was meant to address. They argue that this structure, which is specifically permitted by section 12(d)(1)(E), merely separates typical mutual fund expenses into two distinct levels. The expenses of the Underlying Spokes generally are limited to fund administrative and operating expenses (primarily the administration fee and the rule 12b–1 fee). The expenses of the Underlying Hubs generally are limited to investment advisory fees, custodian fees, portfolio accounting fees, and fees for transfer/accounting services. Thus, applicants assert that there is no significant overlap in the various expenses incurred at the hub level and at the spoke level, and that it is appropriate to collapse these two levels for purposes of the analysis of the operation of Strategic Fund.

7. Applicants believe that, while Strategic Fund could invest directly in the Underlying Hubs (and accordingly impose the same expenses that are charged at the level of the Underlying Spokes directly on Strategic Fund), the proposed structure has advantages for shareholders. Applicants assert that the proposed structure will offer shareholders a clearly defined choice either to allocate and reallocate their assets among the Underlying Spokes of their choosing, or to pay the incremental asset allocation fee so that Strategic Fund will make the asset allocation decisions. In addition, they argue that investing in the Underlying Spokes rather than directly in the Underlying Hubs serves to facilitate the Hub and Spoke® accounting function and avoid the extra costs that would be incurred if a Portfolio invested directly in several Underlying Hubs.

8. Applicants assert that there will be no layering of fees as a consequence of the Strategic Fund structure which will result in fees in excess of those permitted to be imposed by a single fund. Subject to the right to institute such fees and charges to the extent permitted in condition 5 below, it currently is contemplated that Strategic Fund will not impose, and no Underlying Spoke will impose, any front-end or deferred sales charge. The existing Underlying Spokes currently are permitted to pay the Distributor rule 12b–1 fees at a maximum rate of .25% per annum of net assets. Applicants have agreed that any sales charges or service fees charged with respect to Strategic Fund (including those paid at the Underlying Spoke level) will not exceed the limits set forth in the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

9. Applicants believe that Strategic Fund's asset allocation and administrative fee will be justified by the incremental benefits, not otherwise available, of the professional asset allocation service that Diversified will provide for investors choosing to invest in Strategic Fund rather than in specific Underlying Spokes, as well as compensate Diversified for the operating and administrative obligations it will undertake with respect to Strategic Fund. Applicants assert that many investors who have little interest or experience in selecting investments feel a need to seek professional advice in order to achieve successful asset allocation and diversification for initial investments and changes in their mutual fund mix. Applicants believe that Strategic Fund will provide investors with a competitive and viable alternative to other mutual fund based asset allocation programs. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

2. Applicants request exemptive relief from the prohibitions of section 17(a) to allow the transactions described in the application. Applicants believe that the relief is consistent with the standards of section 17(b). Applicants assert that the terms of the proposed transaction are reasonable and fair because the shareholders in Strategic Fund will benefit from the valuable incremental services provided as a result of the proposed structure and from savings that accrue based upon their individual situations, such as by not having to pay fees to a financial adviser or sales commissions to a broker-dealer. Strategic Fund shareholders also will receive practical benefits from the

consolidation of records and reports, and the general ease of investing in one fund instead of several. In addition, in return for the indirect expenses of investing in the Underlying Spokes and the Underlying Hubs, the Portfolios and their shareholders will benefit to the same extent as other shareholders in the Underlying Spokes from the administrative services provided to the Underlying Spokes and the portfolio management services provided to the Underlying Hubs.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. Applicants believe that all shareholders of the Underlying Spokes, including Strategic Fund, will benefit equally from the distribution and distribution-related services received from the Distributor, which services will be financed, in part, from rule 12b–1 fees. Under the Servicing Agreement, the distribution-related expenses relating to Strategic Fund would be paid from the rule 12b–1 fees of the Underlying Spokes only up to the amount of such fees attributable to the shares of the Portfolios, and no Underlying Spoke would be required to pay any additional distribution-related expenses attributable to the Portfolios. In addition to the benefit to each Portfolio from the sale of its shares, applicants assert that each Underlying Spoke would receive a benefit from the sale of shares of the Portfolios to the extent that a Portfolio invests in such Underlying Spoke. Applicants submit that, based on these considerations: (a) Strategic Fund may create benefits for the Underlying Spokes; (b) the benefits would be shared by the Underlying Spokes in proportion to their assets; (c) the Underlying Spokes and Strategic Fund would participate in the arrangement on the same or substantially the same basis; (d) none of the Underlying Spokes, the Underlying Hubs, Strategic Fund, Diversified, or the Distributor would be advantaged or disadvantaged over one another; and (e) the entire arrangement would be consistent with the provisions, policies, and purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Strategic Fund and each Underlying Spoke and Underlying Hub will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

2. No Underlying Hub shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of Strategic Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees'').

4. Before approving any advisory contract under section 15 of the Act, the trustees of Strategic Fund, including a majority of the Independent Trustees, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Hub's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of Strategic Fund.

5. Any sales charges or service fees charged with respect to securities of Strategic Fund, when aggregated with any sales charges or service fees paid by Strategic Fund with respect to securities of the Underlying Spokes, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the Division: monthly average total assets for each Portfolio and each of its Underlying Spokes and Underlying Hubs; monthly purchases and redemptions (other than by exchange) for each Portfolio and each of its Underlying Spokes and underlying Hubs; monthly exchanges into and out of each Portfolio and each of its Underlying Spokes; month-end allocations of each Portfolio's assets among its Underlying Spokes; annual expense ratios for each Portfolio and each of its Underlying Spokes and Underlying Hubs; and a description of any vote taken by the shareholders of any Underlying Spoke, including a statement of the percentage of votes cast for and against the proposal by Strategic Fund and by the other shareholders of the Underlying Spoke. Such information will be provided as soon as reasonably practicable following each fiscal year-end of Strategic Fund (unless the Chief Financial Analyst shall notify Strategic Fund or Diversified in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30861 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc, and P & O Cruises (UK) Limited, 77 New Oxford Street, London WCIA 1PP, England, Vessels: CANBERRA, ORIANA and VICTORIA

Dated: December 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30926 Filed 12–19–95; 8:45 am]

BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21596; 811–4607]

Eaton Vance High Income Trust; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Easton Vance Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 16, 1995 and amended on November 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On February 28, 1986, applicant registered under the Act as an investment company. On March 5, 1986, applicant filed a registration statement under the Securities Act of 1933 registering an indefinite number of shares. The registration statement became effective on August 1, 1986, and applicant's initial public offering commenced soon thereafter. Applicant consists of two series, EV Classic High Income Fund (''Classic High Income'') and EV Marathon High Income Fund (''Marathon High Income'') (collectively the ''Funds''). Applicant is a feeder fund in a master/feeder structure and therefore has no investment adviser.

2. On June 19, 1995, applicant's Board of Trustees, including a majority of Trustees who were not interested persons of applicant, approved an Agreement and Plan of Reorganization for each Fund whereby applicant would transfer all of the assets and liabilities of Classic High Income and Marathon High Income to a corresponding new series of Eaton Vance Mutual Funds Trust (the ''Trust''). These new series are EV Classic High Income Fund and EV Marathon High Income Fund (together, the ''Successor Funds''). In exchange, each Fund would receive shares of beneficial interest of each Successor Fund with an aggregate net asset value equal to the net asset value of each Fund's assets and liabilities transferred. Pursuant to rule 17a–8, applicant's Board of Trustees determined that such reorganization would be in the best interests of applicant and that the interests of existing shareholders of the Funds would not be diluted as a result of the reorganization.[1] No shareholder approval was required by the Declarations of Trust of applicant or the Trust, or by applicable law.

3. On July 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in a Fund in complete liquidation and dissolution of applicant. No brokerage commissions were paid as a result of the exchange.

4. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to, legal fees, registration fees and printing expenses.

5. At the time of the filing of the application, applicant had no assets or liabilities, was not a party to any litigation or administration proceeding, and had no shareholders. Applicant is neither engaged, nor does it propose to engaged, in any business activities other than those necessary for the winding-up of its affairs.

6. On July 31, 1995, applicant dissolved as a Massachusetts business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30860 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other solely by reason of having common trustees and officers, and therefore may rely on the rule.

[Rel. No. IC–21601; 812–9828]

Mutual Fund Group, et al.; Notice of Application

December 14, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Mutual Fund Group, Mutual Fund Trust, Mutual Fund Variable Annuity Trust, Vista Global Fixed Income Portfolio, Vista Growth and Income Portfolio, Vista International Equity Portfolio, Vista Capital Growth Portfolio (collectively, the ''Investment Companies''), and the Chase Manhattan Bank, N.A, or its successor entity subsequent to its merger into Chemical Bank [1] (the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its trustees who are not employees of its affiliated persons.

FILING DATES: The application was filed on October 23, 1995, and amended on December 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

[1] Chase Manhattan Corporation has announced that it plans to enter into a reorganization with Chemical Banking Corporation pursuant to which Chemical Banking Corporation will be the surviving corporation. This merger is expected to be completed on or about April 1, 1996. Subsequent to this merger it is expected that the Chase Manhattan Bank will be merged into Chemical Bank, with Chemical Bank as the surviving bank, assuming the investment management of the Investment Companies.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, the Investment Companies, Vista Service Center, P.O. Box 419392, Kansas City, Missouri 64141–6392, and the Adviser, One Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Mutual Fund Group, Mutual Fund Trust, Mutual Fund Variable Annuity Trust, Vista Global Fixed Income Portfolio, Vista Growth and Income Portfolio, Vista International Equity Portfolio and Vista Capital Growth Portfolio are diversified open-end management investment companies that currently consist of 32 separate portfolios. The Adviser serves as the investment adviser for the Investment Companies and Vista Broker-Dealer Services, Inc. services as their distributor.

2. Applicants request that relief be extended to any other registered open-end investment company established or acquired in the future, or series thereof, (including any successors in interest [2]) advised by the Adviser (together with the Investment Companies, the ''Funds'').

3. Each Investment Company has a board of trustees, a majority of the members of which are not ''interested persons'' of such Investment Company within the meaning of section 2(a)(19) of the Act. Each of the trustees who is not as employee of the Adviser, the Investment Companies' administrator or distributor, or any of their affiliates (''Eligible Trustees'') receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Investment Companies. Applicants request an order to permit the Eligible Trustees to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the ''Plan'') and related election agreement entered into between each Eligible Trustee and the appropriate Fund. Under the Plan, the Eligible Trustees could defer payment of trustees' fees (the ''Deferred Fees'') in order to defer payment of income taxes or for other reasons.

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Trustee will be credited to a book reserve account established by the Fund (a ''Deferral Account''), as of the first business day following the date such fees would have been paid to the Eligible Trustee. The trustee may select one or more investment portfolios from a list of available Investment Companies that will be used to measure the hypothetical investment performance of the trustee's Deferral Account. The value of a Deferral Account will be equal to the value such account would have had if the amount credited to it had been invested and reinvested in shares of the investment portfolios designated by the trustee (the ''Designated Shares'').

5. Each Investment Company intends generally to purchase and maintain Designated Shares in an amount equal to the deemed investments of the Deferred Accounts of its trustees. Any participating money market series of a Fund that values its assets by the amortized cost method will buy and hold the Designated Shares that determine the performance of the Deferral Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. The accrued liability of each Investment Company for the compensation deferrals will fluctuate with changes in the value of the Designated Shares. The Investment Company will not, however, experience any economic effect from the fluctuating liability because it will own Designated Shares purchased with money that otherwise would have been paid to the Eligible Trustee. Changes in the amount of the liability will be exactly matched by changes in the value of the Designated Shares.

6. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

7. Payment to Eligible Trustees will be made in a lump sum or in generally equal annual installments over a period of no more than 10 years as selected by the Eligible Trustee at the time of deferral. In the event of death, amounts payable to the Eligible Trustee under the Plan will become payable to a beneficiary designated by the Eligible Trustee. In all other events, the Eligible Trustee's right to receive payments is non-transferable.

8. The Plan was adopted prior to receipt of the requested relief. Pending receipt of SEC approval, the Plan provides that the compensation deferred by an Eligible Trustee will be credited to a Deferral Account in the form of cash and credited with an amount equal to the yield on 90 day U.S. Treasury Bills.[3]

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18(f)(1). The Plan would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities

[2] ''Successors in interest'' is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] *See, e.g.,* American Balanced Fund, Inc. (pub. avail. Feb. 13, 1984) (no-action assurances given for deferred compensation plan in which the value of the deferred amounts did not depend upon the investment company's performance).

issued by open-end investment companies. Applicants state that such restrictions are set forth in the Plan, which would be included primarily to benefit the Eligible Trustees and would not adversely affect the interests of the trustees or of any shareholder.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to existing Investment Companies. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Investment Companies to invest in Designated Shares without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Investment Company of the Deferred Fees under the Plan. The value of the Designated Shares will be *de minimis* in relation to the total net assets of the respective Investment Company, and will at all times equal the value of the Investment Company's obligations to pay deferred fees.

6. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds,'' as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Designated Shares with the deemed investments of the Deferral Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling any security to such registered investment company. The Adviser is an affiliated person of each of the Fund's portfolios pursuant to section 2(a)(3)(E) of the Act. Each portfolio may be treated as an affiliated person of each other portfolio by reason of being under the common control of the Adviser.[4] The sale by a portfolio of any security to any other portfolio of any Fund would therefore be subject to the prohibitions of section 17(a)(1). Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees with the Designated Shares that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 217(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Fees under the Plan on an ongoing basis.[5]

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan ''on a basis different from or less advantageous than that of'' the affiliated person. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Funds, than if he or she had received trustee fees on a current basis and invested them in Designated Shares.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund that values its assets by the amortized cost method will buy and hold Designated Shares that determine the value of Deferral Accounts to achieve an exact match between the liability of any such Fund to pay compensation deferrals and the assets that offset that liability.

2. If a Fund purchases Designated Shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30908 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Section 2(a)(3)(C) of the Act defines the term ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person.

[5] Section 17(b) may permit only a single transaction, rather than a series of on-going transactions, to be exempted from section 17(a). *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

[Rel. No. IC–21598; 812–9762]

The One Hundred Fund, Inc., et al.; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The One Hundred Fund, Inc., dba Berger 100 Fund (the ''100 Fund''), Berger One Hundred and One

Fund, Inc. (the ''101 Fund''), and Berger Investment Portfolio Trust (the ''Trust'') (collectively, the ''Funds''), and Berger Associates, Inc. (''BAI'').

RELEVANT ACTION SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act; and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the applicant investment companies to enter into deferred compensation arrangements with their independent directors.

FILING DATES: The application was filed on September 13, 1995 and amended on November 30, 1995. Applicant's counsel has stated in a letter dated December 12, 1995 that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 210 University Boulevard, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Law Clerk, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company. BAI serves as the investment adviser to each of the Funds. Applicants request that the exemption also apply to any registered open-end investment company for which BAI, or any entity under common control with or controlled by BAI, subsequently serves as investment adviser.

2. Each Fund has a board of trustees or board of directors. Each board has ten members, eight of whom are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors''). Each independent director receives an annual fee plus a meeting attendance fee. No director who is an interested person of a Fund receives any remuneration from such Fund.

3. Applicants request relief so that the Funds may offer their independent directors deferred compensation plans (each, a ''Plan''). Each Fund's Plan will be administered by its board or by such person or persons as the board may designate to carry out administrative functions under the Plan (the ''Administrator''). Each Plan would permit independent directors of a Fund annually to elect to defer receipt of all or a portion of their fees. This election would enable the independent directors to defer payment of income taxes on such fees.

4. Under the Plans, the Administrator shall maintain a book entry account (an ''Account'') with respect to each deferral election by an independent director and shall credit to that Account an amount equal to all compensation deferred by the independent director under such election, as of the date such fees would have been paid to such independent director absent such deferral. The value of an Account will be equal to the value such account would have had if the amount credited to it had been invested and reinvested in certain designated securities (the ''Designated Shares''). The Designated Shares for an Account will be shares of one or more of the Funds or a money market fund approved by the board of the Fund on which such independent director serves (the ''Investment Funds''), as designated by the participating independent director. The money market fund currently proposed to be included as an Investment Fund is the Cash Account Trust, for which Kemper Financial Services, Inc. acts as investment adviser, and for which BAI provides sub-administration services. The Cash Account Trust is not an ''affiliated person'' of the Funds, as such term is defined in section 2(a)(3) of the Act. Each Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings and all gains and losses that would have been realized had such account been invested in the Underlying Shares.

5. The amounts paid to the independent directors under the Plans are expected to be insignificant in comparison to the total net assets of the Funds. Each Plan provides that a Fund's obligation to make payments from an Account will be a general obligation of the Fund and payments made pursuant to each Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plans, the relationship of an independent director to a Fund will be that of a general unsecured creditor.

6. The Plans do not create an obligation of a Fund to any independent director of a Fund to purchase, hold, or dispose of any investments. if a Fund should choose to purchase investments in order to cover its obligations under a proposed Plan, any and all such investments will continue to be part of the general assets and property of such Fund. In this regard, a Fund may purchase its own shares or the shares of any other Investment Fund to cover its obligations.

7. Under the Plans, an independent director may specify that his or her deferred fees be distributed in whole or in part commencing on (a) a date at least five years following the deferral election, or (b) the date on which the independent director ceases to be a member of the board, but not later than such cessation date. Deferred payments will be made in a lump sum or in monthly or quarterly installments over a period not to exceed ten years, as elected by the independent director. In the event of the independent director's death, amounts payable under a Plan will be payable to his or her designated beneficiary, or, in the absence of such a beneficiary, to his or her estate. In all other events, the independent director's right to receive payments cannot be transferred, assigned, pledged, subjected to garnishment or otherwise alienated.

8. The Plans will not obligate any Fund to retain the services of an independent director, nor will they obligate any Fund to pay any (or any particular level of) director's fees to any director.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act to permit the Funds to enter into deferred fee arrangements with their independent directors; under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) to permit the Investment Funds to sell securities issued by them to

participating Funds; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. The Plans would result in the issuance of a senior security only if it was an obligation or instrument ''similar'' to a bond, debenture or note, and it evidenced indebtedness. In any event, applicants state that the Plans possess none of the characteristics of senior securities that led Congress to enact these sections. The Plans would not confused investors, make it difficult for them to value their shares or convey a false impression of safety. Further, the Plans would not be inconsistent with the theory of mutuality of risk.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plans would set forth any restrictions on transferability or negotiability, and such restrictions are primarily to benefit the participating directors and would not adversely affect the interests of the independent directors or of any Fund shareholder.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plans would provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each of the existing Funds has limitations on its ability to purchase securities issued by other investment companies. Any relief granted from section 13(a)(3) would extend only to the existing Funds. Applicants believe that an exemption is appropriate to enable the existing Funds to invest in Designated Shares without a shareholder vote. Applicants will provide notice to shareholders of the deferred fee arrangements with the independent directors in their registration statements. The value of the Designated Shares will be *de minimis* in relation to the total net assets of the respective Fund. Changes in the value of the Designated Shares will not affect the value of shareholders' investments. Applicants believe that permitting the Funds to invest in Designated Shares without shareholder approval, therefore, would result in no harm to shareholders.

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be ''affiliated persons'' of one another by reason of being under the common control of their adviser. Applicants believe that an exemption from this provision would not implicate Congress' concerns in enacting the section, but would facilitate the matching of each Fund's liability for deferred directors' fees with the Designated Shares that would determine the amount of such Fund's liability.

8. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction, applicants also request an order under section 6(c) so that relief will apply to a class of transactions. Applicants believe that the proposed transactions satisfy the criteria of sections 6(c) and 17(b).

9. Section 17(d) of the Act prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction after considering whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Under the Plans, participating independent directors would not receive a benefit that otherwise would inure to a Fund or its shareholders. The effect of the Plans is to defer the payment of compensation that a Fund otherwise would be obligated to pay on a current basis as services are performed by its independent directors. Applicants also believe that the Funds' ability to recruit and retain highly qualified independent directors would be enhanced if they were able to offer their independent directors the option of deferred payment of their directors' fees.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

1. If a Fund purchases Designated Shares issued by itself, an affiliated Fund, or any other fund which has been approved as an Investment Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such Fund, affiliated Fund, or other Investment Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30859 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26432]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 15, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the

Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 8, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation (70–8087)

Central and South West Corporation (''CSW''), 1616 Woodall Rodgers Freeway, Dallas, Texas 75266–0164, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43, 53 and 54 thereunder.

CSW currently has in place a Dividend Reinvestment and Stock Purchase Plan (''Current Plan'') pursuant to which shares of CSW's common stock, $3.50 par value per share (''Common Stock''), are either newly issued or purchased in the open market with reinvested dividends and optional cash payments made by registered shareholders of CSW, employees and eligible retirees of CSW or its subsidiaries and non-shareholders of legal age who are residents of the States of Arkansas, Louisiana, Oklahoma and Texas.

CSW now proposes to make certain amendments to the Current Plan (''Plan'') (a) to increase the number of originally issued shares of Common Stock that may be offered pursuant to the Plan from 5 to 10 million, (b) to permit non-shareholders of legal age who are residents of all fifty States of the United States and the District of Columbia to participate in the Plan, (c) to increase the initial cash investment required for enrollment in the Plan by non-employees and non-retirees from $100 to $250, and (d) to change the frequency of investment in shares of Common Stock by the Plan from bi-monthly to weekly.

The Plan will be open to registered shareholders of CSW, employees and eligible retirees of CSW or its subsidiary companies, and non-shareholders of legal age who are residents of the fifty States of the United States and the District of Columbia. Such residents include but are not limited to retail electric customers of CSW's public utility subsidiaries.

Consistent with the Current Plan, the Plan will include full, partial or no reinvestment of dividends and the ability to make optional cash purchases of at least $25 per investment and not more than $100,00 annually. There is an initial purchase requirement of $250 in order to enroll in the Plan. Employees and retirees will be able to participate in the Plan through payroll/pension deductions with a $10 minimum per pay period.

The shares of Common Stock purchased under the Plan with the initial cash investments, optional cash purchase payments and reinvested dividends, if any, may be, in the discretion of CSW, authorized but previously unissued Common Stock or shares of Common Stock purchased on the open market by the independent agent of the Plan (''Independent Agent''). CSW proposes to use the proceeds from the sale of the newly issued shares of Common Stock for repayment of long- or short-term indebtedness, by working capital or for other general corporate purposes. Purchases will be made weekly on each Monday of each week (or, if not a business day, the next succeeding business day). The timing and manner of purchases and sales on the open market will be determined solely by the Independent Agent. The price of shares of newly issued Common Stock will be the average of the daily high and low sale prices of the Common Stock on the New York Stock Exchange on the applicable investment date. The price of shares of Common Stock purchased on the open market by the Independent Agent with respect to any investment period will be the average price of all such shares of Common Stock purchased during such investment period plus brokerage commissions and other fees. The investment period will commence on each Monday of each week (or, if not a business day, the next succeeding business day) and will continue until all applicable funds are invested, but in no instance past the day prior to the commencement of the next investment period.

A Participant may sell or withdraw all or a portion of his/her shares at any time. Sales will be made weekly by the Independent Agent and the price will be the weighted average cost of shares sold during the applicable investment period, less fees and commissions/

CSW's Shareholder Services Department will continue to share the administration of the Plan with the Independent Agent. The Independent Agent will make open market purchases and sales under the Plan and CSW will handle the other elements of Plan administration. Participants will receive quarterly statements of activity in their account.

EUA Cognenex Corporation (70–8755)

EUA Cogenex Corporation (''Cogenex''), P.O. Box 2333, Boston, Massachusetts 02107, a nonutility subsidiary of Eastern Utilities Associates (''EUA''), a registered holding company, have filed an application-declaration under sections 9(a), 10, 12(b), 12(f) and 13 of the Act and rules 45, 53, 54, 90 and 91 thereunder.

Cogenex proposes to form a Delaware limited liability company (''JV ESCO'') with Westar Business Services, a nonaffiliated Kansas corporation and a wholly owned subsidiary of Western Resources, Inc., a Kansas corporation, for the purpose of providing energy conservation services in the states of Kansas, Missouri, Nebraska, Oklahoma and Arkansas and to other Westar or Cogenex customers outside such states as opportunities arise (''Territory''). Cogenex and Westar will each own 50% of JV ESCO and share equally in the capital contributions, allocations of profits and losses and distributions of JV ESCO. JV ESCO will be governed overall by a board of directors comprised of six directors, three of whom will be appointed by Cogenex and three by Westar. Daily management decisions will be made by a management committee comprised of one representative from each of Cogenex and Westar. Cogenex and Westar will make capital contributions in an amount initially expected to be approximately $1,000 each, which will be used by JV ESCO for working capital purposes. Cogenex states that capital contributions to JV ESCO will be exempt from the requirement of Commission authorization pursuant to rule 45(b)(4). Cogenex and Westar will subcontract personnel to JV ESCO at cost as needed until such time, if any, as JV ESCO employs its own personnel.

Cogenex and Westar entered into a letter agreement dated November 15, 1995 in which they agreed to perform initial marketing, sales, auditing, bidding, job procurement and performance activities in preparation of forming JV ESCO and to develop a long-term business plan for JV ESCO. The term of the letter agreement is one year (''Interim Period''), unless terminated

sooner by the formation of JV ESCO or by the decision of one or both of Cogenex and Westar. Cogenex and Westar will assign all contracts and business opportunities obtained during the Interim Period within the Territory at cost by JV ESCO. Cogenex and Westar will also be reimbursed by JV ESCO for their expenses incurred during the Interim Period but not previously reimbursed.

Cogenex and Westar also propose to guarantee third party loans to JV ESCO for up to an aggregate of $15 million. Cogenex states that such guarantees shall be made within five years of the formation of JV ESCO. Cogenex also states that any amount borrowed by JV ESCO from third party lenders will be through loans exempt from the requirement of Commission authorization pursuant to rule 52(b).

Cogenex requests that any goods or services furnished by Cogenex or any of its associate companies (other than an associate company which is a public utility company) to JV ESCO be furnished at prices not to exceed market prices pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. JV ESCO will not be providing goods or services to Cogenex or its associate companies.

Hope Gas, Inc., et al. (70–8757)

Hope Gas, Inc. (''Hope Gas''), Bank One Center, Clarksburg, West Virginia, 26302–2868, a gas public utility subsidiary company of Consolidated Natural Gas Company (''CNG''), a registered holding company, and CNG Producing Company (''CNGP''), 1450 Poydras Street, New Orleans, Louisiana, 70112–6000, a gas and oil exploration and production subsidiary company of CNG, have filed an application under sections 9(a) and 10 of the Act and rules 43 and 54 thereunder.

Hope Gas has signed a binding letter of intent, contingent upon Commission approval, to sell all of its production wells to CNGP. The sale price of approximately $4.6 million is the net book value of all the production properties as shown on Hope Gas' books of account as maintained in the ordinary course of business and in accordance with generally accepted accounting standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Secretary.

FR Doc. 95–30905 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21602; 812–9648]

State Street Bank and Trust Company, et al.; Notice of Application

December 14, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (''Act'').

APPLICANTS: State Street Bank and Trust Company (''State Street'') and Global Lending Trust (''Trust''), on behalf of themselves and any registered management investment company or series thereof that may participate from time to time as lenders (''Lending Funds'') in the securities lending program administered by State Street (''Program'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) to grant an exemption from section 12(d)(1), under sections 6(c) and 17(b) to grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit State Street, as agent for the Lending Funds, to invest cash collateral derived from securities lending transactions in shares of one or more series of the Trust (''Investment Funds'').

FILING DATES: The application was filed on June 23, 1995, and amended on October 24 and December 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: State Street, Two International Place, Boston, Massachusetts 02110; Global Lending Trust, c/o Raymond P. Boulanger, Exchange Place, 25th Floor, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

State Street, a wholly-owned subsidiary of State Street Boston Corporation, is a Massachusetts chartered trust company and a member of the Federal Reserve System. State Street provides institutional custody services and asset management services for pension plans, foundations, governmental plans, individuals, and registered management investment companies. State Street also administers the Program, which involved securities loan transactions in excess of $50 billion on average during the first three quarters of 1995.

2. The Trust is a Massachusetts business trust organized pursuant to a master trust agreement dated June 15, 1995. The Trust proposes initially to establish three separate Investment Funds: The U.S. Government Securities Money Market Fund (''Government Securities Fund''), the General Money Market Fund (''Money Market Fund''), and the Short-Term Fund.[1] Shares of each Investment Fund will be sold on a private placement basis in accordance with Regulation D under the Securities Act of 1933 only to Lending Funds and other institutional investors participating in the Program. Shares of the Investment Funds will be sold directly by the Trust without a distributor and will not be subject to a sales load or a redemption fee. Assets of the Trust will not be subject to a rule 12b–1 fee. The Trust will register as an investment company under the Act

[1] The Government Securities Fund will invest exclusively in securities issued or backed by the U.S. Government or its agencies or instrumentalities and in repurchase agreements collateralized with such securities (''U.S. Government Securities''). The Money Market Fund will invest in a variety of U.S. dollar-denominated instruments, including U.S. Government Securities, corporate debt obligations, commercial paper, time deposits, certificates of deposit and bankers acceptances, obligations of foreign governments and supranational organizations and shares of money market mutual funds. All investments of the Government Securities Fund and the Money Market Fund will qualify as ''eligible securities'' within the meaning of rule 2a–7 under the Act. The Short-Term Fund will invest in a variety of securities, the maximum effective duration of which will not exceed five years.

prior to the commencement of operations.

3. State Street will serve as the investment adviser, custodian, transfer agent, and administrator of the Trust with respect to each Investment Fund, and will be entitled to receive a fee for its services.

4. State Street proposes to enter into a securities lending agreement (''Lending Agreement'') with each Lending Fund.[2] The Lending Agreement will authorize State Street to enter into a master borrowing agreement (''Borrowing Agreement'') with each person designated by the Lending Fund as eligible to borrow securities (''Borrower''). State Street will maintain a list of Borrowers that it believes to be creditworthy and that are eligible to participate in the Program. Each Lending Fund will be responsible for independently evaluating and monitoring the creditworthiness of each Borrower it selects from the pre-approved list and will have the right to add Borrowers to the list, subject to State Street's approval.

5. State Street will invest cash collateral received in the Program on behalf of a Lending Fund in shares of one or more Investment Funds to the extent permitted by the terms of the Lending Agreement. The Lending Agreement will authorize and instruct State Street to invest the cash collateral in accordance with specific guidelines provided by the Lending Fund. Such guidelines will identify the particular Investment Funds and other investment vehicles, instruments, and accounts, if any, in which cash collateral may be invested, and the maximum and minimum amounts of cash or percentages of collateral that may be invested in each Investment Fund and other authorized investments.[3] Each Lending Fund will reserve at all times the right to rescind authorization to invest in an Investment Fund. State Street will not purchase shares of any Investment Fund unless the Lending Fund has represented to State Street that (a) Its policies generally permit the Lending Fund to engage in securities lending transactions; (b) such transactions will be conducted in accordance with the securities lending guidelines established in a series of no-action letters issued by the SEC's Division of Investment Management; (c) its policies permit the Lending Fund to purchase shares of the Investment Funds with cash collateral; and (d) its securities lending activities will be conducted in accordance with all applicable representation and conditions of the application.

6. The Lending Agreement and the Borrowing Agreement will establish, with respect to each transaction, the initial and ongoing collateralization requirements, the types of collateral that may be accepted, and the manner in which the portion of the income earned on the investment of cash collateral during the term of the loan to be repaid to the Borrower (''Borrower's Rebate'') will be established. The Lending Agreement will fix the percentage of the difference between the Borrower's Rebate and the actual return on the investment of cash collateral (''Net Income'') to be retained by the Lending Fund and the percentage to be paid by the Lending Fund to State Street. The Lending Agreement also will authorize State Street to negotiate the Borrower's Rebate for each transaction.

7. During the term of each loan, the Lending Fund will retain the economic rights of an owner of the securities that are the subject of a loan, and will have the power to terminate a loan at any time and recall loaned portfolio securities in time to exercise voting rights. The Borrowing Agreement will provide that, within three trading days (or such other time period as is the customary settlement period for the loaned securities) of the Lending Fund giving notice of the termination of any loan, the Borrower is required to transfer the loaned securities (or certificates for identical securities) to State Street or the Lending Fund's custodian, and pay to State Street or the Lending Fund's custodian the amount of all dividends and distributions that would have been payable to the Lending Fund on or with respect to such securities if they had not been loaned, to the extent not previously paid.

8. Applicants represent that participation in the Program will provide the Lending Funds with economies of scale that will maximize investment opportunities, minimize investment risk, facilitate management of liquidity, and minimize administrative costs, thereby increasing their net income. In addition, applicants state that participation in the Program will permit the Lending Funds to minimize credit risk and interest-rate risk through diversification, while receiving the procedural and substantive protections of the Act.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) prohibits an investment company from acquiring shares of another investment company if, immediately after such acquisition, the acquiring company would own more than three percent of the total outstanding voting stock of the acquired company, securities of the acquired company with an aggregate value in excess of five percent of the value of the total assets of the acquiring company, or securities of any investment companies (including the acquired company) with an aggregate value in excess of ten percent of the value of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits an investment company from selling its shares to another investment company if after such sale more than three percent of the outstanding voting stock of the acquired company would be owned by the acquiring company, or more than ten percent of the voting stock of the acquired company would be owned by investment companies.

2. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the investment of cash collateral in shares of the Investment Funds will permit the Lending Funds to maximize returns with less investment risk than would be present with other means of investment. Applicants also believe that the administrative burdens associated with compliance with section 12(d)(1), such as daily monitoring of total assets and other investments of the Lending Funds, could impair State Street's ability to provide securities lending services to Lending Funds in an economical and administratively efficient manner, and therefore could create competitive disadvantages for the Lending Funds relative to other institutional investors that seek to engage in securities lending activities. In addition, applicants submit that the investment of cash collateral in shares of the Investment Funds do not give rise to the policy concerns of section 12(d)(1), which include unnecessary duplication of costs (such as sales loads, advisory fees, and administrative costs) and undue influence by the fund holding company over its underlying funds arising from the threat of large scale redemptions of the securities of

[2] The Lending Funds will include, but will not be limited to, investment companies for which State Street or an affiliated person thereof also serves as custodian, transfer agent, and/or administrator.

[3] Applicants anticipate that one or more of the Lending Funds participating in the Program may be investment companies that hold themselves out as money market funds and comply with the requirements of rule 2a–7 (''Money Market Lending Funds''). Cash collateral in which the lender is a Money Market Lending Fund will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a–7.

the underlying investment companies. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is in the public interest and consistent with the protection of investors and the purposes intended by the Act.

3. Section 17(a) prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such investment company. From time to time, it is possible that a Lending Fund may directly or indirectly own, control, or hold with power to vote five percent or more of the shares of an Investment Fund, which will result in the Lending Fund being an affiliated person of the Investment Fund. In these circumstances, the purchase or redemption of shares of an Investment Fund for the same Lending Fund or an affiliated person of such Lending Fund could violate section 17(a).

4. Section 17(b) authorizes the SEC to issue an order of exemption from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Applicants believe that the proposed transaction will be reasonable and fair and consistent with the general purposes of the Act as well as with the policies of each Lending Fund. The Lending Funds will not be able to purchase or redeem shares of the Investment Funds at a price lower or higher than the per share net asset value of the Investment Funds, and there will be no sales loads or redemption fees charged with respect to such shares. In addition, State Street will be able to invest cash collateral only in accordance with specific guidelines provided by the Lending Funds, which will identify both the particular Investment Fund and other investment vehicles, instruments, and accounts (if any) in which cash collateral may be invested, and the maximum and minimum amounts of cash or percentages of collateral that may be invested in each Investment Fund and other authorized investments.

5. Section 17(b) could be interpreted to exempt only a single transaction.[4] Under section 6(c), however, the Commission may exempt a series of transactions that otherwise would be prohibited by section 17(a). Applicants believe that the requested relief is appropriate under section 6(c) for the same reasons that it is appropriate under section 17(b).

6. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The ownership by a Lending Fund of five percent or more of the shares of an Investment Fund would cause the Lending Fund to be an affiliated person of the Trust. State Street, as investment adviser for each of the Investment Funds, will be an affiliated person of the Trust. As such, State Street may, from time to time, be an affiliated person of an affiliated person of one or more Lending Funds by virtue of such Funds' interests in the Trust. Consequently, the proposed purchase of shares of the Investment Funds with cash collateral, the proposed purchase of shares of the Investment Funds with cash collateral, the redemption of such shares, and the sharing of Net Income between State Street and the Lending Funds may constitute a joint transaction for which an exemptive order is required.

7. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve such a transaction, the SEC must consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participant of the investment company is on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposed transactions satisfy these standards. Each Lending Fund will invest in shares of the Investment Funds on the same basis as every other shareholder of the Trust, and all shares will be priced in the same manner and redeemable under the same terms. The arrangements regarding the sharing of Net Income between State Street and each Lending Fund are the product of arm's length negotiations between the Lending Fund and State Street as service provider. Finally, the proposed investment of cash collateral in the Investment Funds is consistent with the provisions and purposes of the Act because participation in the proposed arrangement will allow the Lending Funds to increase their investment opportunities and returns while lowering their transaction costs in connection with securities lending transactions.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Lending Fund will purchase shares of any Investment Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund that are not ''interested persons'' of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that any investment of cash collateral in the Investment Funds is in the best interests of the shareholders of the Lending Fund.

2. State Street will lend portfolio securities of each of the Lending Funds only in accordance with the guidelines specified by such Lending Fund.

3. Cash collateral from loans by Lending Funds will be invested in shares of each Investment Fund subject to such limitations and guidelines as are specified by the Lending Funds.

4. Cash collateral from loans by Money Market Lending Funds will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. Shares of the Investment Funds will not be subject to a sales load or redemption fee, and assets of the Investment Funds will not be subject to a rule 12b–1 fee.

6. State Street will not acquire shares of any Investment Fund on behalf of any Lending Fund if, at the time of such acquisition, (a) State Street is an affiliated person of the Lending Fund or an affiliated person of an affiliated person of the Lending Fund, or (b) the Lending Fund is an affiliated person of the Investment Fund or an affiliated person of an affiliated person of the Investment Fund, in either case by means other than by directly or indirectly owning, controlling, or holding with the power to vote five percent or more of the shares of an Investment Fund by the Lending Fund or an affiliated person of the Lending Fund.

7. In connection with all matters requiring a vote of shareholders of an Investment Fund, State Street will pass through voting rights to those Lending Funds that have a beneficial interest in such Investment Fund.

[4] *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30906 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0341]

Mezzanine Capital Corporation; Notice of Surrender of License

Notice is hereby given that Mezzanine Capital Corporation, 75 State Street, Suite 2500, Boston, Massachusetts 02109, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Mezzanine Capital Corporation was licensed by the Small Business Administration on May 28, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 1, 1995 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 14, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30878 Filed 12–19–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–95–088]

Navigation Safety Advisory Council, Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Navigation Safety Advisory Council (NAVSAC).

DATES: Completed applications and resumes must be received by February 29, 1996. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NVT–3), U.S. Coast Guard, 2100 Second St., SW., Room 1409, Washington, DC 20593–001. Completed applications and resumes should be mailed or delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council (NAVSAC), Commandant (G–NVT–3), U.S. Coast Guard, 2100 Second St., SW., Room 1409, Washington, DC 20593–001, (202) 267–0415.

SUPPLEMENTARY INFORMATION: NAVSAC is a twenty-one member Federal advisory council that advises the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The applications will be considered for seven (07) expiring terms. The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

The three-year membership term begins July 1, 1996, and, assuming that Congress passes pending legislation to renew the Council, will expire June 30, 1999. Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

The Council meets twice each year at various sites in the continental United States. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

Dated: December 15, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 95–30966 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–95–44]

Petitions for Exemptions; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 9, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemptions

Docket No.: 28367.

Petitioner: Mr. Stephen R. Raklovits.

Sections of the FAR Affected: 14 CFR 103.11.

Description of Relief Sought: To permit Mr. Raklovits to operate a powered parachute-type ultralight at night, for the purpose of conducting demonstrations and training, and for special uses including search, rescue, and surveillance, for local, State, and Federal law enforcement agencies.

Docket No.: 28381.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.613.

Description of Relief Sought: To permit ATA's member airlines and other similarly situated part 121 operators to dispatch or release aircraft for operations to any destination airport under instrument flight rule or over-the-top when weather reports or forecasts, or any combination thereof, indicate that the weather conditions at the estimated time of arrival at the destination airport may be below meteorological visibility minimums, subject to certain conditions and limitations.

Docket No.: 28385.

Petitioner: Mr. John B. Milan.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To permit Mr. Milan to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28386.

Petitioner: Heart of Georgia Technical Institute.

Sections of the FAR Affected: 14 CFR 141.35(d) (2) and (3).

Description of Relief Sought: To allow the Heart of Georgia Technical Institute to designate Mr. William James Breazeale to serve as chief flight instructor without meeting certain experience requirements for such a designation.

Docket No.: 28395.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought: To permit an appropriately trained qualified and authorized check airman, in lieu of an FAA inspector, to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424.

Dispositions of Petitions

Docket No.: 24256.

Petitioner: Dalfort Training, L.P.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d)(2) and (3); 61.65 (c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/Disposition: To extend Exemption No. 4955, as amended, which permits Dalfort Training, L.P., to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 22, 1995, Exemption No. 4955E.*

Docket No.: 26903.

Petitioner: The Embassy of the Federal Republic of Yugoslavia.

Sections of the FAR Affected: 14 CFR SFAR 66–2.

Description of Relief Sought/Disposition: To permit the operation of an aircraft carrying delegates from both the Federal Republic of Yugoslavia and the Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovnia to operate to, within, and from the United States to and from a point within Bosnia and Montenegro. *Grant, October 27, 1995, Exemption No. 6196.*

Docket No.: 27457.

Petitioner: Daniel Webster College.

Sections of the FAR Affected: 14 CFR 141.35(d)(2).

Description of Relief Sought/Disposition: To extend Exemption No. 5829, which permits Ms. Robin L. Bray to serve as chief flight instructor at Daniel Webster College administering courses of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, without the required minimum of 2,000 hours as pilot in command. *Grant, November 7, 1995, Exemption No. 5829A.*

Docket No.: 27960.

Petitioner: Rogers Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by Rogers Helicopters, Inc., (RHI) to remove and/or replace the passenger seats and approved stretchers on aircraft used in operations conducted by RHI under part 135. *Grant, October 24, 1995, Exemption No. 6194.*

Docket No.: 28110.

Petitioner: McKeeman Productions, Inc., d.b.a. SkySports International.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in SkySports-sponsored jumping events without complying with the parachute equipment and packing requirements of the FAR. *Grant, November 22, 1995, Exemption No. 6228.*

Docket No.: 28232.

Petitioner: Summit Jet Corp.

Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b) (6) and (7).

Description of Relief Sought/Disposition: To permit Summit Jet Corp to operate its Lear 55 turbojet airplane (Registration No. N123LC, Serial No. 045) in extended overwater operations equipped with only one high-frequency (HF) communication system. *Grant, November 3, 1995, Exemption No. 6226.*

Docket No.: 28237.

Petitioner: PreMair, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65(c)(e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/Disposition: To permit PremAir to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 7, 1995, Exemption No. 6190.*

[FR Doc. 95–30924 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under § 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 5, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1996.

The following is a brief overview of the use application.

PFC Project #: 96–02–U–00–MHT
Level of the proposed PFC: $3.00
Charge effective date: January 1, 1993
Estimated charge expiration date: March 1, 1997
Estimated total net PFC revenue: $1,100,000

Brief description of project: Part 150 Noise Mitigation/Residential Soundproofing/Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103:

Issued in Burlington, Massachusetts on December 12, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–30918 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Brunswick and New Hanover Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Brunswick and New Hanover Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposal to relocate US 17 in Brunswick and New Hanover Counties, North Carolina. The proposed improvement would involve the relocation of the existing US 17 from US 421 to existing US 17 south of Wilmington. The proposed action is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) The ''no-build,'' (2) two build alternatives for constructing a four-lane full control of access freeway on new location, and (3) improvements to existing US 421 and US 17/74/76.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A complete public involvement program has been developed for this project to include: the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in this project study area. A toll-free project telephone ''hotline'' is also being made available. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 8, 1995.

Roy C. Shelton,

Operations Engineer, Raleigh, NC.

[FR Doc. 95–30843 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. PS–142; Notice 2]

Considerations for a Program Framework for Risk Management Demonstrations

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is considering how to implement a program administrative framework to receive, analyze, accept, monitor and revise risk management plans that interstate natural gas transmission and hazardous liquid pipeline companies would submit as risk management demonstration projects. RSPA is not yet prepared to consider a conceptual administrative framework for intrastate companies.

A demonstration project framework is needed to validate benefits in applying risk management in the pipeline industry and to determine how it would work most effectively. A framework is also needed to evaluate the use of

company-specific risk management plans as an alternative to the existing regulatory requirements and to plan for a transition should the demonstration justify it. For demonstration projects to help further the transition, the framework must identify how pipeline companies would submit, implement and improve risk management demonstration plans and how OPS, in consultation with State pipeline safety agencies, would evaluate and monitor them.

The demonstration projects are intended to test whether company-specific plans can provide equal or greater safety than the current regulatory requirements provide. The results will be evaluated, and if determined to be successful, OPS would consider expanding the application. Participation in risk management initiatives will be voluntary and subject to OPS discretion.

The proposed framework outlined below was distributed and discussed at a public meeting on this subject held on November 7, 1995, in McLean Virginia. Provisions for written comments to the framework were announced in a Federal Register notice published September 21, 1995. Through this notice, OPS is again requesting comments on the proposed framework.

DATES: Responses to this request for comments should be submitted on or before February 20, 1996.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Patrick J. Ramirez, (202) 366–9864 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Pipeline Safety (OPS) furthers pipeline safety through a compliance-based system of primarily performance-based regulations embodied in 49 CFR Parts 192–195 and Part 199. The program is conducted in partnership with the states, where certified states take responsibility for intrastate pipeline systems and OPS retains responsibility for interstate pipeline systems.

Certain pipeline incidents in the last two years have heightened public awareness of, and concerns about, pipeline safety and environmental protection. Although the pipeline safety record compares favorably with other forms of energy transportation, recent incidents have raised the question of whether safety and environmental protection can be improved by means other than the current system of compliance with minimum federal requirements. There are also expectations of increasing cost and complexity of managing pipeline systems from future potential regulations. Many government and industry officials are interested in new approaches that might more effectively evaluate risks and focus resources in areas with the greatest potential for reducing risk. There is also interest in improving accountability of the industry and the government to the public.

The Department of Transportation transmitted a legislative proposal for reauthorization of the pipeline safety program on March 13, 1995 that would establish a structure to evaluate pipeline risks and their consequences, develop solutions to address the risks, and establish priorities for implementing the solutions. This process is generally referred to as Risk Assessment Prioritization.

The pipeline industry supported an approach that focused on operator risk management by explicitly authorizing demonstration projects. This approach was included in H.R. 1323 which was ordered reported by the House Committee on Transportation and Infrastructure on April 5, 1995. A similar bill was reported by the House Committee on Commerce. Section 6 of H.R. 1323 would require the Secretary to establish a demonstration project on risk management that would seek voluntary participation by operators to demonstrate applications of risk management. In carrying out the demonstrations, the Secretary would ensure that approved plans under the project achieve an equivalent or greater overall level of safety than would be achieved by complying with the existing regulatory requirements. The Department formally expressed its view to the Committee on Transportation and Infrastructure that this provision is consistent with the Department's proposal for a risk management program.

The pipeline risk management demonstration projects for interstate natural gas and hazardous liquid transmission companies would be a vital step in the transition between compliance-based regulations and risk management. The demonstration projects would allow both the government and industry to gain some experience before extending the program. The transition period between compliance-based regulation and risk management programs used by a large segment of the pipeline industry will likely take several years.

To study the applicability and benefits of formal pipeline risk management programs, OPS, representatives of the oil and gas industry, states and local interest groups formed two ''risk assessment quality action teams'' (RAQTs). The first, in 1994, focused on oil and petroleum product transmission application of risk management and the second, in 1995, focused on natural gas transmission. Both RAQTs have been defining how risk management might be beneficially applied in the pipeline industry. This work has been based on how other industries and government agencies are using risk assessment and management to more efficiently allocate resources for safety.

II. Risk Assessment Quality Team (RAQT) Findings

A. Definition of Risk Management

Risk management is the process of deciding what to do about risk associated with a system. Risk can be expressed as the likelihood of an event occurring multiplied by the severity or the consequence of its effect. The goal of risk management is to set priorities for using finite resources to reduce risk.

A formal definition of risk management from a Gas Research Institute report, adopted by the Gas RAQT is: ''Risk Management is the systematic application of management policies, procedures, finite resources and practices to the tasks of analyzing, assessing and controlling risks to protect the public, the environment and company employees and assets.''

The Oil RAQT report stated that ''Risk management is the overall logical process by which a company understands the risk associated with operation of its facilities and determines whether and how to take action to reduce or accept risks. ''

B. Successful Efforts in Other Industries

The RAQTs focused on how risk management practices have been applied worldwide to reduce risk from chemical, nuclear and industrial process hazards as well as from pipeline system leaks and ruptures. The teams' technical conclusions were influenced by the experience of industries and current effective practices of risk management.

In the industries referenced above, the risk management process is applied to the entire physical system that is the source of the risk and follows a life cycle analysis. Various analytical approaches can be performed qualitatively or quantitatively and at many levels of effort. Both teams placed considerable importance on the historical role and value that has accrued from industry codes and standards and recognized the major influence of the insurance industry on corporate loss reduction programs.

C. Expected Benefits in the Pipeline Industry

Companies in the industries using risk management have reported improved safety records and reduction in the number of incidents. The execution of risk management generally leads to a discipline of detailed review of the system, its operation and maintenance. This expanded review can lead to identifying new sources of risk that may not be recognized in a compliance-based management process. Another aspect of the risk management discipline is that it entails a rigorous and comprehensive analysis of the likelihood of incidents and the magnitude of the consequences.

Many pipeline companies have elements of risk management systems in place, although they lack a comprehensive program with formal documentation and public reporting. Practices identified include use of risk assessment techniques that exceed current regulatory requirements. Clearly an area of improvement in the future would be integration of practices into a formal program with clear tracking of goals, activities and performance measurement.

Many pipeline operators routinely exceed the safety levels mandated in current regulation. The Gas RAQT found that the gas transmission industry expends significant resources complying with minimum requirements, and then further allocates resources for practices which exceed the minimum regulatory requirements.

OPS would like to consider an alternative plan that would allow operators flexibility to determine how best to meet safety goals under Federal and state oversight. For example, rather than OPS requiring operators to use a particular inspection tool on their pipelines, an alternative approach would be OPS allowing operators to employ their understanding of their systems to prioritize resources to best ensure pipeline integrity. Operators could take an integrated systems approach from start to finish rather than the current practice of maintaining some systems because they meet federal requirements and then overlaying additional safety measures.

OPS believes that there are many methods and initiatives outside the current regulatory structure that hold promise for pipeline industry use in maintaining or improving safety while recognizing competitive pressures in the marketplace. OPS is considering risk management demonstration projects to test the effectiveness of risk management and to provide a basis for refining the process to improve pipeline safety in the years ahead.

D. Conceptualization of a Risk Management Process

To set parameters for integrating risk management programs into the oversight of pipeline transportation as an option to the current compliance-based scheme, certain assumptions are fundamental: (1) Each pipeline system is different, (2) each risk does not pose the same probability of occurrence and consequence, and (3) given the right analytical tools, technical discretion and financial capability, pipeline operators can make better decisions about how to allocate resources with the data available.

For risk management to work, operators will need to give OPS detailed information about, and the reasons for, taking alternative safety actions in addition to providing baseline safety level information and performance measures to evaluate program progress. At the same time, OPS will give operators greater latitude to choose how to assess and manage risk and what methodologies are most effective.

OPS is considering the approach to risk management that the Gas RAQT outlined. The team report was developed with support from the Gas Research Institute and input from the risk management project team of the Interstate Natural Gas Association of America. It identifies (1) *Process* elements that define technical details of risk management execution and (2) *program* elements that define administrative, managerial and logistical aspects of execution with the structure of an organization.

The process steps have conceptually been expressed in a three, four, or five step approach in other industries, but each approach basically utilizes a Risk Assessment, Risk Control and Decision making, and Performance Measurement process. These steps result in assessing threats from specific problems or sources, ranking their relative importance, determining which have greatest risk reduction potential, allocating resources, and monitoring the effectiveness of prevention and mitigation actions over time.

The program elements constitute a management framework that implements and supports the process by taking the results of the assessment and decisions and putting them into practice in day-to-day operations. Program elements could include Management Responsibilities, Standards, Guidelines, Operation and Maintenance, Training, Security, Incident Reporting, Emergency Preparedness and Response, Communications, and Auditing and Corrective Action, to name some examples.

The process and program elements of risk management can be performed at various levels of detail. The RAQTs referred to this as a ''graded approach'' —the methods applied should be commensurate with the risk. Further, the RAQTs expect that companies wishing to demonstrate risk management programs may wish to try the concepts out within a part of a pipeline system, rather than within the entire pipeline.

In summary, risk management is based on sound engineering principles and good business practices to help make decisions that reduce risk. A pipeline risk management program depends on good data to help predict accident likelihood and consequence in the risk assessment stage. All elements of the pipeline business, including location, product, process, equipment, components, procedures, supervision, management, records, and human resources are considered and integrated. Eventually, risk management should address the life of the pipeline system from design and construction through start up, operation, maintenance, and shut down.

III. Integrating Risk Management Programs into the National Pipeline Safety Program

While government and industry objectives to assure safety and environmental protection would remain the same under risk management, and the respective roles and responsibilities remain the same fundamentally, risk management offers the opportunity to approach the objectives in a manner that is more flexible to individual circumstance. The new approach will be more open, interactive and dynamic. OPS believes that the program framework must have the following characteristics:

(1) Because consideration needs to be given to providing information and assurances about pipeline safety to other levels of government, the

communication process needs to be more interactive and efficient.

(2) Because the primary function of these communications will be the exchange of proposals and their justification, data must be provided on the current safety level or baseline and the expected levels resulting from the program. The data development process and cost must be practical.

(3) Because assessing the program is a critical but new function, the performance measurement activity will likely advance incrementally.

IV. Risk Management Demonstration Project Objectives

OPS offers the following risk management demonstration project objectives for public comment and discussion:

- To give a limited number of qualified interstate transmission operators the opportunity to conduct risk management demonstration projects.
- To determine whether risk management provides equal or greater safety than a compliance-based approach.
- To help each operator comprehensively assess threats to integrity, whatever the scope of the project, or whatever aspect of its system is involved in the project.
- To demonstrate how appropriately the draft risk management standards address risks and can be applied effectively.
- To determine how operators consider low probability—high consequence incidents in addition to past accident or component failure history.
- To determine how operators evaluate smaller precursor events that could lead to larger failures.
- To have operators demonstrate how an integrated review of safety operations across the company can expedite prompt response to situations that could lead to failures.
- To have operators systematically correlate data, rank planned actions according to their potential to reduce risk, and follow through on these actions.
- To promote technological innovation.

OPS seeks comment on whether these objectives are appropriate for a four year demonstration project.

V. Program Framework Elements

This program administrative framework to receive, analyze, approve, monitor and revise risk management plans is being considered for interstate natural gas transmission and hazardous liquid pipeline companies that would submit proposals for risk management demonstration projects.

The framework being considered would have four primary elements, appropriate to the features and characteristics of risk management. The first two elements would be developed through industry standards processes. The contents would be similar to the description in II D of this document. The second two OPS would construct:

(1) Industry Technical Process Standard (R1), covering Risk Assessment, Risk Control and Decision-making, and Performance Measurement.
(2) Industry Quality Program Standard (Q1), covering the operator's management framework that implements and supports this process, and puts risk management into daily operations.
(3) Federally developed risk management program participation requirements for communications and reporting, planned oversight and evaluation.
(4) Third party review to simultaneously validate the quality and adequacy of the technical review and administrative process used by OPS.

Elements (1) and (2) of the program framework would be the basis for operators to apply for and OPS to accept a risk management program demonstration project.

To develop knowledge and skill in the application and use of the industry standards, OPS envisions a cooperative effort to develop risk management training curriculum concurrently with the standards. Further, OPS expects that trade groups, OPS, and state agencies would participate in design and development.

OPS would encourage a broad range of stakeholders, including Federal and State pipeline safety officials, to participate in review of the draft industry standards. This process is expected to begin under the auspices of the several trade organizations. While developing and approving Risk Management standards (R1 and Q1) would be a multi-year process, a basic draft would be considered as a point of reference for the demonstration program preliminary review.

The third element, Federally developed requirements likely to be subject to public notice and comment, should identify the project administrative framework components, particularly requirements for applying for the program, obtaining interim project approval, participating in long-term evaluation and monitoring, conflict resolution, penalties, incentives, and program maintenance.

VI. Third Element: Possible Elements of the Administrative Risk Management Demonstration Project Process

(1) *An Informal Consultation with OPS and States.* The interstate transmission operator would consult OPS Headquarters staff, Regional Directors and State pipeline safety program officials affected by the pipeline system to declare program technical objectives. These regulatory officials would express safety concerns and give advice before formal proposals are submitted.

Identifying risk management proposal objectives would begin with the operator submitting a letter of intent. The letter would describe the initial proposal including a request for a consultation with OPS and other pipeline safety regulators on the proposal and justification. In the consultation, the operator would discuss such issues as how hazards are assessed and how risks are currently managed, baseline performance data to indicate the safety level under current regulatory activities and future indicators, program goals, and the scope of the demonstration program.

During the consultation with OPS and state pipeline safety regulators, an operator would explain the risks it intends to address and the nature and extent of its proposal. The operator would demonstrate why it believes the proposal could make its pipeline operate at least as safely as it does by adhering to the current federal safety requirements. Federal and State pipeline regulators would actively participate in the consultation, responding to the operator and raising any concerns.

(2) *Formal Written Proposal.* An operator would submit a formal written proposal to OPS, resulting from the consultation. The proposal would state how the operator would apply the two industry risk management standards and how the plan is expected to meet or exceed the safety level achieved through the current regulatory program.

The proposal would describe the risk assessment process, the means for and the technical rationales for ranking actions, improvement targets, and a preliminary risk reduction plan with decision points for action. Also included would be baseline performance measures against which process targets can be set. Organizational structure, financial capability, and engineering control accountability and integrated evaluation would be briefly described. An operator

would need to address in the formal proposal the concerns raised in the consultation session and to provide assurances that management commits to allocating enough resources and to implementing the program in accordance with the proposal.

(3) *Program Sufficiency Review.* OPS and state officials affected by the pipeline system would examine the proposal for completeness against the technical process and quality program standards. This is estimated to occur within sixty to ninety days of the date OPS received the proposal. The review would determine safety expectations from the program initiatives and that current safety would be equalled or exceeded. OPS would also consider experience with the operator, compliance history and performance.

The sufficiency review could result in a proposal being accepted or returned. OPS acceptance at this stage would mean officially accepting the demonstration project as an alternative to complying with the current regulatory process. A returned proposal would lead to second consultation where recommendations would be made or the project could be postponed to a later date.

(4) *Technical Process Review*. OPS and its consultants would perform this review after several months of the project's operation under the risk management scheme and periodically thereafter to assure that the program is meeting the safety goals established by the program performance indicators or metrics. It will take several years to assess trends on long range issues. This review would involve substantive engineering reviews to validate former assumptions and expected outcomes. A follow-on joint government/industry team process would be charged with the task of developing guidelines on use of performance measurements. The review would verify that operators were keeping to their planned program milestones.

(5) *Required Public Prospectus.* As part of the process review, an operator in the demonstration programs would prepare public documents that explain its risk management plans and objectives. An operator would explain how it plans to meet or exceed existing safety levels, what its performance metrics are and how well it has performed. The public would be able to read the operator prospectus before OPS conducts the process reviews and forward any questions to OPS to present during the regularly scheduled audit. OPS could provide feedback through public notice or other means. This mechanism is designed to improve accountability to the public.

(6) *Conflict Resolution*. Procedures may be developed to resolve conflicts between an operator and the government or other stakeholders on program adequacy.

(7) *Civil Penalties*. Penalties would be administered for an operator not following the technical process and quality program standards and not keeping its program commitments within its risk management plan and would be addressed within the provisions of the existing regulations.

VII. Fourth Element: Third Party Review Being Considered

The final planned framework element being considered would be a third party review that would be conducted during the four year demonstration project. OPS would contract with an independent scientific organization to give OPS findings on the planned framework. Findings would include whether the draft standard is adequate and complete, and whether the administrative project framework is sufficient to assure that the program is delivering the expected goals.

VIII. Evaluation and Follow-Up

A limited number of demonstration projects would provide the opportunity to evaluate whether operators' risk management decisions on how best to use their companies' resources to protect people and the environment are an appropriate alternative to industry-wide regulation. The Demonstration program in its entirety would be evaluated in the final year. A successful evaluation would (1) determine that risk management can be a cost-effective way to manage risks pipelines pose and (2) give operators flexibility to manage risk based on their companies' needs, conditions and expertise rather than complying with compliance-based safety regulations.

Successfully completing the demonstration projects is an important part of the Government's evolving regulatory process. OPS and industry having sufficient pipeline operator safety data is critical to managing the risks pipelines pose. OPS does not have enough safety data to be statistically meaningful as a risk management baseline. OPS believes the demonstration program would identify the type and amount of pipeline performance data, pipeline characteristics including failure data, needed to manage risk. The demonstration projects might also lead to more research and development activity in designing models to predict pipeline failure. The demonstration projects would also be the basis for improving the industry technical standards for other operators to develop more effective risk management programs and helping OPS be more creative, effective, and flexible in overseeing and approving ways to make pipelines safer.

OPS would report lessons learned from the demonstration projects through public meetings and to Congress. The report would address project results, including whether or not the demonstrations maintained or strengthened safety and how OPS and industry can improve safety.

Issued in Washington, DC on December 11, 1995.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–30775 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Fiscal Service

1996 Fee Schedules for the Issuance of Definitive Securities and TREASURY DIRECT Securities Accounts

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing two schedules of fees to be charged in 1996 for marketable Treasury securities. The schedules are for the fees charged for the issuance of definitive securities and the fees for the annual maintenance of certain TREASURY DIRECT securities accounts.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–7761.

SUPPLEMENTARY INFORMATION: On January 23, 1995, the Department of the Treasury established fee schedules for the issuance of definitive securities and the maintenance of certain TREASURY DIRECT securities accounts.

The Treasury has decided that the fees for the issuance of definitive securities and the maintenance of certain TREASURY DIRECT Securities Accounts in 1996 should remain unchanged from the amounts currently in effect.

Schedule of Fees for Definitive Securities

The fee schedule for the issuance of a definitive security is as follows: a fee of $50 will be charged for each definitive security issued on a transfer, reissue, exchange or withdrawal from book-entry form, or as a result of the granting of relief on account of loss, theft, destruction, mutilation or defacement. Payment of the fee must accompany the request for the issue of securities in physical form. If a request results in the issuance of more than one security, the amount of the fee is arrived at by multiplying the number of pieces requested by $50. The fee announced above applies beginning January 2, 1996.

Schedule of Fees for TREASURY DIRECT Securities Accounts

The fee schedule for TREASURY DIRECT securities accounts is as follows: each TREASURY DIRECT securities account holding Treasury bonds, notes and bills, pursuant to 31 CFR Part 357, that exceeds $100,000 in par amount will be charged an annual maintenance fee in the amount of $25. For 1996, this will be imposed on accounts exceeding $100,000 in par amount as of May 17, 1996. The determination as to what accounts are subject to the fee shall be made annually. Each account holder will be individually billed.

Dated: December 7, 1995.

Van Zeck,

Acting Commissioner of the Public Debt.

[FR Doc. 95–30781 Filed 12–19–95; 8:45 am]

BILLING CODE 4810–39–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 244
Wednesday, December 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: December 07, 1995, 60 FR 63571.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., December 13, 1995.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for December 13, 1995:

Item No., Docket No., and Company

CAE–6
ER95–1295–000, Market Responsive Energy, Inc.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31044 Filed 12–18–95; 2:09 pm]

BILLING CODE 6717–01–M

federal register

Wednesday
December 20, 1995

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.

Commuter Operations and General Certification and Operations Requirements; Air Carrier and Commercial Operator Training Programs; Final Rules

Flight Crewmember Duty Period and Flight Time Limitations and Rest Requirements; The Age 60 Rule; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, 127, and 135

[Docket No. 28154; Amendment Nos. 91–245, 119, 121–251, 125–23, 127–45, 135–58, SFAR 50–2, SFAR 71 and SFAR 38–12]

RIN 2120–AF62

Commuter Operations and General Certification and Operations Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators affected are those conducting scheduled passenger-carrying operations in airplanes that have passenger-seating configurations of 10 to 30 seats (excluding any crewmember seat) and those conducting scheduled passenger-carrying operations in turbojet airplanes regardless of seating configuration. The rule revises the requirements concerning operating certificates and operations specifications for all part 121, 125, and 135 certificate holders. The rule also requires certain management officials for all certificate holders under parts 121 and 135. The rule is intended to increase safety in scheduled passenger-carrying operations and to clarify, update, and consolidate the certification and operations requirements for persons who transport passengers or property by air for compensation or hire.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, (202) 267–8321; Katherine Hakala, (202) 267–8166; or Dave Catey, (202) 267–8166; Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Outline of Final Rule

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II. History
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9. Subpart M—Airman and Crewmember Requirements
10. Subpart N and O—Training Program and Crewmember Qualifications
11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers
12. Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations
13. Subpart T—Flight Operations
14. Subpart U—Dispatching and Flight Release Rules
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B. Part 119— Certification: Air Carriers and Commercial Operators
VII. Discussion of Comments Related to Costs and Benefits
VIII. Regulatory Evaluation Summary
IX. The Amendments

Background

I. Introduction

On March 29, 1995, the Federal Aviation Administration (FAA) published a Notice of Proposed Rulemaking (NPRM) on ''Commuter Operations and General Certification and Operations Requirements'' (Notice No. 95–5; 60 FR 16230.) In Notice 95–5, the FAA proposed that commuter operations conducted in airplanes with 10–30 passenger seats be conducted under the domestic or flag rules of part 121 of title 14 of the Code of Federal Regulations. Currently, scheduled passenger-carrying operations in airplanes with passenger-seating configurations of over 30 seats or more than 7,500 pounds payload capacity are conducted under part 121. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of 30 seats or less and 7,500 pounds or less payload capacity are conducted under part 135. Part 121, which provides the safety requirements for all major air carriers (as well as for any certificate holder conducting scheduled or nonscheduled operations with airplanes configured with more than 30 passenger seats), is generally considered to have more restrictive requirements than part 135. The regulatory changes were introduced in order to address the continually changing needs of the industry and to fulfill the agency's statutory requirement. This is the final rule, based on Notice 95–5.

II. History

Historically, the maximum certificated takeoff weight (MCTW) of an airplane determined both an airplane's categorization and operating requirements. Beginning in 1953, airplanes with an MCTW of 12,500 pounds or less were defined as ''small airplanes'' and were permitted to carry fewer than 10 passengers in on-demand air taxi service. The rules under which those operations were conducted were eventually codified as part 135. Airplanes with an MCTW of more than 12,500 pounds were defined as ''large airplanes,'' and most large airplanes carried 20 or more passengers in scheduled air transportation. The Civil Aeronautics Board (CAB) used the large/small dividing line to separate major airline companies, who were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the CAB in order to operate in interstate commerce as a common carrier, from on-demand air taxi operators, who were exempted from obtaining a CPCN.

During this time, the CAB issued only a small number of CPCN's to major, publicly-recognized companies, such as Eastern, American, Delta, Pan Am, TWA, etc. In contrast, on-demand air taxi operators numbered in the thousands. These operators were typically fixed-base, usually at small airports, and owned fewer than five airplanes. They provided on-demand air transportation as well as other services, such as training new pilots and selling and renting small airplanes. Typically, the air taxi portion of such an operator's business was a small part of that business and rarely involved any scheduled operations.

Beginning in the late 1960's, airplane manufacturers began to design and build small airplanes, that is, less than 12,500 pounds maximum certified takeoff weight, that were capable of carrying more than 10 passengers, often close to 20. Some air taxi operators began to offer services that resembled

the services of the major airlines, given the economic opportunity to operate under the less restrictive requirements of part 135. Though these scheduled commuter operators began to overtake some air taxi operations, they still remained a small percent of the thousands of air taxi operators.

In 1978, as a result of the Airline Deregulation Act, the airline industry was deregulated economically and air carriers were given more freedom to enter and exit markets without prior government economic approval. One of the most significant effects of this deregulation was that it allowed major carriers to eliminate service to smaller communities, where such service proved to be uneconomical for the large aircraft the carriers operated. Major carriers were replaced in those communities by the commuter carriers. Under this ''hub and spoke'' system, the major part 121 air carriers provided service to the large metropolitan airports, while the growing class of scheduled part 135 air carriers provided service between smaller communities as well as feeder service from the smaller communities to the larger cities to connect with the major carriers' operations. With these changes, the traditional two categories of operations became three categories of operations—scheduled commuter operations, traditional air taxis, and traditional major air carriers.

Also in 1978, in response to the Airline Deregulation Act, the FAA reissued part 135 standards to upgrade commuter and air taxi safety requirements and make them more like part 121. At that time part 135 certificate holders were required to meet more stringent requirements in several areas, including weather reporting, flightcrew training, maintenance, and qualifications for management personnel.

Since 1978, the FAA has issued a number of separate rule changes to further align part 135 safety requirements with those in part 121. Despite this realignment, differences between the regulations still exist. The economic incentive to operate under part 135 still exists because the requirements in part 135 are still less restrictive than the part 121 requirements in many instances.

For the remainder of this document the following terms are used in the following ways. ''Commuter,'' ''commuter airline,'' and ''commuter operator'' mean those operators conducting scheduled passenger-carrying operations under part 135 in airplanes with a passenger-seating capacity of 30 or fewer seats. This current use of the word ''commuter'' does not include scheduled passenger-carrying operations conducted under part 121 in airplanes with a seating capacity of 31 to 60 seats. The term ''commuter category airplane'' used in this document refers to airplanes type certificated in that category under part 23 in contrast to airplanes type certificated under part 25 which are transport category airplanes. The term ''nontransport category airplanes'' is used for commuter category airplanes and SFAR 41 and predecessor normal category airplanes to be operated under part 121, as well as for some older airplanes certificated before the predecessors of part 25 (parts 04 and 4b of the Civil Air Regulations) came into existence. The Department of Transportation (DOT) uses the term ''commuter'' more broadly to include all scheduled passenger-carrying operations conducted in airplanes with a passenger-seating capacity of 20 to 60 seats. (Note: The High Density Rule, 14 CFR part 93 uses ''scheduled commuters'' differently. Its meaning under that part is not relevant to its use in this document.) The term ''regional,'' which is used by industry to refer to short-haul, passenger-carrying, scheduled operations conducted under part 121 or part 135, is not generally used by the FAA.

III. The Problem and Related FAA Action

Recent part 135 commuter accidents have focused public, government, and industry attention on the safety of commuter operations. While the safety level of part 135 commuter operations has continued to improve, accident data, public perception, and recent government inquiries show a need for additional measures.

III.A. Accident Rate for Commuter Operations

The airline industry that uses airplanes with a passenger-seating capacity of 60 or fewer seats to conduct scheduled operations under parts 121 and 135 is an essential part of the air transportation network in the U.S. These airlines now fly more than all airlines did in 1958. In 1993, over 50 million passengers, 12 percent of the total passenger flights in the country, were flown by these airlines. Half of these passengers were flown in part 135 operations, i.e., in aircraft with 30 or fewer seats.

Over the past two decades the safety record of part 135 commuters has greatly improved. The accident rate per 100,000 departures in 1993 was one-fourth the accident rate in 1980. However, the accident rate for commuter airlines operating under part 135 continues to be higher than the rate for domestic part 121 airlines. In the past 2 years, several commuter airline accidents occurred that attracted media and public attention and caused government and industry officials to scrutinize the safety system for commuter operations under part 135.

These accidents included the December 1, 1993, crash of a Jetstream 3100, operated by Express II (as Northwest Airlink), at Hibbing, MN; the January 7, 1994, crash of a Jetstream 4100, operated by Atlantic Coast Airlines (as United Express), at Columbus, OH; and the December 13, 1994, crash of a Jetstream 3200, operated by Flagship Airlines (as American Eagle), at Raleigh-Durham, NC. All of these accidents involved fatalities.

III.B. Public Perception

With the increase in the number of flights to many communities conducted in airplanes with a seating capacity of 30 seats or less, some members of the public are questioning whether they are receiving an appropriate level of safety in small propeller-driven airplanes compared to the level of safety they receive in larger aircraft. This public concern is partly a result of the integration of commuter carriers with major airlines under an arrangement known as code-sharing. The term ''code-sharing'' refers to the computerized airline reservation system that lists a commuter flight in the reservation system under the same code used by a major carrier. A passenger who books with a major carrier may have a leg of the flight automatically booked with a smaller commuter affiliate of the major carrier.

With the media attention to recent commuter accidents, the passenger may also believe that the flight involves more risk because the smaller airplane and its operation may not have to meet the same safety standards. Most passengers probably do not realize that some differences in standards are necessary because of differences in the airplane and operation and that some of the accidents that are categorized by the media as ''commuter'' accidents occurred in flights that were being conducted under part 121; that is, in airplanes with over 30 passenger seats.

The differences in regulations were initially based on differences in the types of operations and differences in the size of airplanes; these differences in many instances still apply. But other differences, such as certain performance and equipment requirements,

operational control requirements, and passenger information requirements are not size- or operationally-based. Some differences between the two sets of regulations must be maintained while others can be eliminated to improve the safety of commuter operations.

III.C. Congressional Hearings

On February 9, 1994, Congress held hearings on the adequacy of commuter airline safety regulations. The purpose of the hearings was to determine if FAA safety regulations should be modified to establish a single standard for all scheduled operations regardless of airplane size. Representatives of government, industry, and the public presented testimony. Most testimony supported the upgrading of safety requirements.

III.D. NTSB Study

In November 1994, the National Transportation Safety Board (NTSB) published a study on commuter airline safety. (National Transportation Safety Board Safety Study: Commuter Airline Safety, NTSB/SS–94/02.) The study was based on the NTSB's analysis of accident investigations and previous studies, on a recent site survey of airline operations and policies conducted at a representative sample of commuter airlines, and on information obtained from a public forum on commuter airline safety convened by the NTSB.

In the study, the NTSB found that the commuter air carrier industry has experienced major growth in passenger traffic and changes in its operating characteristics since the NTSB's 1980 study of the commuter airline industry. The NTSB found that there has been a trend in the industry toward operating larger, more sophisticated aircraft, and many carriers have established code-sharing arrangements with major airlines. The NTSB concluded that the regulations contained in 14 CFR part 135 have not kept pace with changes in the industry.

As a result of the findings, the NTSB issued the following safety recommendations to the FAA:

- Revise the Federal Aviation Regulations such that all scheduled passenger service conducted in aircraft with 20 or more passenger seats would be conducted in accordance with the provisions of 14 CFR part 121. (A–94–191)
- Revise the Federal Aviation Regulations such that all scheduled passenger service conducted in aircraft with 10 to 19 passenger seats would be conducted in accordance with 14 CFR part 121, or its functional equivalent, wherever possible. (A–94–192)

In the 1994 study, the NTSB examined the differences in flight dispatch requirements between parts 121 and 135. The NTSB found that, in the absence of support from licensed dispatch personnel, it is difficult for a part 135 pilot to accomplish several tasks between flights in the short periods of time available. The lack of support might increase the risk of critical mistakes that could jeopardize the safety of flight. As a result the NTSB issued the following recommendation to the FAA:

Require principal operations inspectors (POI) to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. (A–94–193)

The FAA published all of the NTSB recommendations in the Federal Register (59 FR 63185, December 7, 1994) and received public comments generally supporting the expansion of the operational rules of part 121, except for flight time limitations, to commuter operations under part 135. Some commenters had considerable reservations about applying certain part 121 equipment requirements to smaller airplanes. The FAA considered these comments in developing this rule.

III.E. Related FAA Action

In December 1994, the FAA proposed revisions to the training and qualification requirements of certificate holders conducting commuter operations under part 135. The proposed rule also addressed crew resource management training for pilots, dispatchers, and flight attendants in part 121. (59 FR 64272, December 13, 1994) [Add Final Action]

IV. The Proposed Rule and General Description of Comments

In Notice 95–5, the FAA proposed to require that all scheduled passenger-carrying operations in airplanes with a passenger-seating configuration of 10 or more seats (excluding any crewmember seat) and all scheduled operations in turbojets (regardless of the number of seats) must be conducted under part 121. The proposal would require certificate holders now conducting scheduled passenger-carrying operations under part 135 in airplanes with a passenger-seating configuration (excluding any crewmember seat) of 10 to 30 seats or in turbojets to be recertificated and to conduct the applicable operations in compliance with part 121 requirements. In some instances the proposed rule revised the requirements of part 121 to make compliance with the requirements feasible for operations in smaller, nontransport category airplanes.

In response to Notice 95–5, the FAA has received over 3,000 comments from the public. Of these, most are solely on the issue of the Age 60 Rule. Many of the Age 60 commenters are pilots and other individuals who address the current rule in part 121; very few address the specific Age 60 issue contained in this rulemaking, i.e. the applicability of the Age 60 Rule to pilots of affected commuter airplanes. These comments are summarized in Section V.E., The Age 60 Rule.

Approximately 200 comments were received on the substantive issues raised by Notice 95–5. These commenters represent air carriers; manufacturers; associations representing air carriers, manufacturers, pilots, dispatchers, and passengers; State and local governments; the U.S. Small Business Administration; the National Transportation Safety Board; and individuals. While some commenters voice general support for the goals of Notice 95–5, most raise concerns about specific proposals. Industry commenters are particularly concerned about the costs of complying with the proposed rule.

The FAA also conducted three public meetings on the proposed rule: on May 18, 1995, in Anchorage, Alaska; on June 14, 1995, in Chicago, Illinois; and on June 21, 1995, in Las Vegas, Nevada. Testimony from the public meetings and written statements submitted at the meetings have been included in the FAA public docket, have been considered by the FAA in developing the final rule, and are discussed in the following discussion of comments along with all written comments that were submitted to the FAA docket.

In Notice 95–5, the FAA identified major issues that the agency addressed in developing the proposal. These included applicability of the proposal, aircraft certification issues, flight time limits, the Age 60 Rule, use of a dispatch system, certain equipment items, and the compliance schedule. Comments received on these major issues and the FAA's response to these comments are discussed in Section V. Comments received on specific proposals and the FAA's response to these comments are discussed in Section VI. Comments specifically addressing cost issues are discussed in Section VII. Below is a list of some of the major commenters and their associated abbreviations. The full name of each commenter is used when the commenter is first mentioned. In

subsequent discussions, the commenter's abbreviation, as shown below, is used.

Abbreviations for Commenters

AAAE American Association of Airport Executives
AACA Alaska Air Carriers Association
ADF Airline Dispatchers Federation
AIA Aerospace Industries Association
ALPA Air Line Pilots Association
APA Allied Pilots Association
ASA Atlantic Southeast Airlines
GAMA General Aviation Manufacturers Association
HAI Helicopter Association International
IAPA International Airline Passengers Association
NACA National Air Carrier Association
NATA National Air Transportation Association
NTSB National Transportation Safety Board
Penair Peninsula Airways
RAA Regional Airlines Association

V. Major Issues

V.A. General Justification

In Notice 95–5, the FAA justified the proposed rule on the basis of the higher accident rate for commuter airlines. Parts of the proposed rule were also supported by the testimony from Congressional hearings on commuter airline safety regulations and by the NTSB study, based on accident investigations and previous studies, which found that part 135 regulations had not kept pace with changes in the industry.

Comments: The NTSB and the Air Line Pilots Association (ALPA) generally support the proposal and its justification. A comment from the International Airline Passengers Association (IAPA) supports the rulemaking justification by stating the findings of a recently completed IAPA study of commuter/regional airplane safety records in the United States covering the period 1970 through March 31, 1994. According to IAPA, during that period carriers using airplanes with 30 or fewer seats had 29 fatal accidents with 249 passenger fatalities; over 30 seat regional carriers had 1 fatal accident with 2 passenger fatalities; major airlines had 11 fatal domestic jet accidents with 527 passenger fatalities.

In contrast to these comments, many other commenters state that the proposed rulemaking lacked sufficient justification. Recent accident data, say these commenters, have shown significant reductions in accident rates for commuters so that the difference in accident rates for part 121 operations and part 135 commuter operations is minimal. According to at least one of these commenters, if the accidents that occurred in extreme environments such as Alaska are removed, the accident rate under the two parts would be either the same or lower for part 135 commuter operations.

According to some commenters, the recent accidents cited in Notice 95–5 were all caused by pilot error and thus would not have been prevented by this rulemaking but could have been prevented by improvements in training.

Some commenters state that the proposed rule is the result of public, media, and agency overreaction to recent commuter accidents and that both the public and the media drew inaccurate conclusions about commuter airline safety from these accidents. According to these commenters, instead of hastily proposing rules based on incomplete information, the agency should have informed the public that many so-called commuter operations are already being conducted under part 121.

Several commenters state that the proposed rule will decrease safety because in order to avoid the proposed restrictions, certificate holders now operating airplanes with a seating capacity of 10 to 19 passenger seats will switch to reciprocating-powered airplanes with a passenger seating capacity of 9 or less in order to continue to operate under part 135. Furthermore, some commenters state that if fares are significantly increased to pay for the more restrictive requirements, passengers may choose ground transportation, which has a much higher accident rate.

Several commenters state that the proposed rule would have a significant economic impact on small airline operators, in some cases forcing them to close their businesses, thus eliminating air transportation to some locations. In addition, according to some commenters, the proposed rule would have a negative impact on competition, particularly in the foreign market because the cost of U.S. manufactured airplanes would increase.

FAA Response: The FAA does not agree with the assessment that the proposed rule lacked sufficient justification. The FAA recognizes the validity of some of these comments especially in regard to unintended safety decrements if the aircraft performance portions of the proposed rule were adopted on the schedule proposed. While the FAA recognizes the improvements in the accident data for commuter airlines in recent years, it intends through this rulemaking, and other related rulemaking actions underway, to reduce the accident rate even further.

Several commenters have questioned the need for a rule that would move affected commuters into part 121 domestic or flag operations. For instance two commenters argue that a dispatch system would not have prevented the three accidents cited by the FAA in the NPRM. It would be a mistake to assume that the FAA is basing this final rule on just those three accidents. Similarly, it would be a mistake to conclude that the FAA is justifying this rule on merely ''perceptions'' of a problem. Those accidents were catalysts for the Government to focus on the differences in the part 121 accident rate and the accident rate for 10- to 30-seat part 135 commuters. Over the next 15 years affected commuters are expected to have had 67 more accidents than they would have had if the accident rate for part 135 affected commuters were the same as that for part 121 scheduled operators. The FAA believes that adoption of this rule will significantly close the accident rate gap over time.

The FAA believes that the part 121 regulatory scheme for scheduled operations is more appropriate for the 10- to 30-seat scheduled operations. The added safety features and requirements in part 121 domestic/flag rules, including the dispatcher system, will increase safety for the affected commuters. Because most accidents are caused by human errors, rules such as the part 121 training rules and the dispatcher system rules are some of the most valuable tools in reducing the number of these kinds of accidents. Rules that most directly relate to preventing accidents caused by human errors are being imposed on the affected commuters on a faster schedule than many of the other rules (e.g., aircraft performance and certain equipment retrofits). It can be reasonably anticipated that applying part 121 operating rules, including these two groups of rules, can begin to immediately and significantly reduce the accident rate for affected commuters. For instance, the FAA anticipates that requiring operators to have someone (i.e., a certificated dispatcher) double check the work of the pilot and provide the flight crew with updates on weather and alternate airports can reduce some human factor errors. The FAA believes that if the flight crew is subjected to more stringent flight and duty safeguards (either the current part 121 domestic flight and duty rules or the rules in a soon to be issued NPRM in which the FAA will propose to overhaul all the flight and duty regulations), the dangers of fatigue causing a human factors error will be reduced. Enhanced part 121 training (which is being required of

affected commuters in an associated final rule) will also reduce some human factor errors.

It is critically important to impose the bulk of the part 121 regulatory scheme on affected commuters because the absence of any significant portion of that regulatory scheme may lessen the effectiveness of the rest of the safety features in the part 121 regulatory scheme. Even the best trained and well rested pilot is a human being and, therefore, subject to making errors. With a dispatcher system, the chances of pilot miscalculations or oversights could be reduced. Moreover, a dispatcher can assist the flight crew in making enroute plans for an alternate airport (which might be necessary due to weather problems, air traffic control problems, airplane equipment problems, fuel problems, etc.) while the crew focuses on flying the airplane. It is reasonable to conclude that the accident rate for affected commuters can be reduced to a level closer to that of current part 121 domestic operations by eliminating most of the regulatory differences that the two different regulatory schemes allowed.

While major air carriers may require commuter affiliates to follow certain part 121 standards, and in some cases even exceed some part 121 standards, no part 135 commuter operator currently operates under part 121 operations specifications or totally complies with all part 121 standards (e.g., many part 121 requirements are based on the assumption that transport category airplanes are operated). Most importantly, no part 135 commuter is required by current FAA regulation to comply with part 121 requirements.

Recent accidents brought to public attention the differences between part 135 and part 121 and the lack of continuing justification for these differences. As Notice 95–5 pointed out, the distinction between these two types of operations was, in the beginning, an obvious necessity. Major air carriers engaged in public transportation were entirely different from the small on-demand, air taxi operator. But with the development and growth of what has come to be known as commuter service, the line between the two has blurred. Certain segments of the commuter industry have continued to develop commuter category airplanes, holding the line at 19 passenger seats in order to stay within the limits of the less restrictive airworthiness regulations for nontransport category aircraft. This has created the potential for the further development of commuter airplanes specifically designed to stay within the limits of the less restrictive regulations while at the same time becoming as sophisticated or more sophisticated in technology than some transport category airplanes operated by the major carriers. With hindsight, the FAA may not have drawn the line as it currently is but would have attempted from the start to maintain one set of requirements.

Until now the line between the requirements has not created a safety concern, but as the commuter market grows, the disparity between the two sets of requirements is of more concern. There is no longer any justification for maintaining two sets of standards for scheduled operations in airplanes with a passenger-seating configuration of 10 or more seats. When a passenger pays for a ticket on an FAA certificated commuter operation, that passenger must be assured of the highest possible level of safety.

With respect to commenters—concerns that the proposed rules will actually decrease safety because certificate holders will switch to reciprocating-powered airplanes, the FAA has modified the proposal, especially in regard to the schedule for some airplanes to meet part 121 airplane performance criteria, to allow operators sufficient time to build up capital or credit to make changes to the existing fleet or to purchase new airplanes that meet the higher performance standards. The FAA does not want to move so fast as to force operators to use airplanes that have even higher accident rates (i.e., airplanes with 9 or fewer seats).

The FAA finds that safety and the public interest require extending the proposed compliance dates for imposing part 121 performance criteria requirements and some equipment requirements until it is economically feasible for operators of 10- to 19-seat airplanes to acquire or lease replacement aircraft. The FAA has analyzed the situation and has concluded that many operators of 10–15 seat aircraft would replace those aircraft with 9 or fewer seat aircraft to avoid the sudden imposition of large costs on their current fleets. Without the FAA modifying its proposal with regard to airplane performance requirements, many airplanes would be eliminated from scheduled service at the first compliance date (i.e., 15 months after publication of the final rule) and operators of other airplanes would have to offload passenger seats, thereby causing the economic and safety impacts discussed previously. This modification would be consistent with the National Transportation Safety Board's (NTSB) recommendation for airplanes with 10- to 19-seats in scheduled service. For those aircraft, the NTSB recommended that scheduled passenger service be conducted in accordance with part 121 ''* * * or its functional equivalent, wherever possible''.

Clearly the NTSB used the phrase ''wherever possible'' because it knew that it was not possible for a substantial portion of the 10- to 19-seat airplane fleet to meet all of the requirements of part 121. The NTSB carefully chose its words when it made its recommendations for 10–19 seat airplanes used in scheduled service. The NTSB recognized that the FAA necessarily had to exercise judgment about which part 121 regulations to impose, which regulations could be modified to achieve functional equivalency, and which regulations simply might not be possible.

In regard to comments that higher fares resulting from this rulemaking will cause passengers to switch to less safe modes of transportation, it has been the FAA's observation that passengers are usually willing to pay for safety. While some may choose to drive rather than fly, that has not stopped the airlines in the past from raising fares. It should also be noted here that the public tolerates a higher accident rate for automobile travel than for airplane travel. If air transportation accident rates approached that of ground travel, most Americans would stop flying. The air transportation industry is very aware of this; it is the main reason that air transportation is safe. As one commenter points out, the recent commuter accidents caused a 12 percent drop in passengers on commuter airlines. That is a significant cost to industry.

The FAA has carefully considered the economic impact of the proposed regulations and has reviewed and revised its analysis in light of the comments received. (See Section VIII.) The agency has determined that the impact of the final rule should not disrupt air transportation service and that few, if any, certificate holders will discontinue their commuter operations. During the transition period, the FAA will work with certificate holders who are switching to part 121 requirements to make the switch as smooth as possible. It should also be noted that the compliance schedule provides for a gradual updating of equipment and operations and will allow certificate holders the choice of upgrading or phasing out airplanes that cannot be upgraded without significant cost.

Some may argue that there may still be limited circumstances, even with these changes, where the effects of this rule (and related rulemakings on

upgraded training requirements and pilot flight time and duty limitations) will be so burdensome as to lead to adverse safety consequences and/or a loss of critical air service. This is neither FAA's intention nor its expectation. Indeed, the entire premise of this rulemaking is that safety standards can and must be improved for the benefit of passengers in 10–30 passenger seat aircraft in scheduled service.

Nevertheless, there is in place in 14 CFR 11.25 a process for requesting and granting exemptions from regulatory requirements, including those adopted here. As with any request for exemption, of course, an applicant would have to demonstrate that the public interest justifies such an exemption. In this case, an applicant could show, for example, that it is unable to comply with a particular provision or a particular schedule date due to circumstances beyond its reasonable control (rather than its own failure to act in a timely or prudent manner), that there is convincing evidence that alternative service is unavailable to the public, and that the carrier would be able to maintain an adequate level of safety during the period of the requested exemption.

We would expect that any exemption from this rule would be for a limited period only, such as the time required for delivery of a piece of equipment that has been ordered. Our goal would be to permit the air carrier to come into compliance with the rule in an orderly manner, and not simply to delay or avoid the cost of compliance.

The FAA considers this rulemaking a positive step towards promoting air transportation by renewing confidence in commuter operations. Most importantly, this rulemaking should reduce the accident rate of the affected commuters to a rate that is closer to that of current part 121 domestic operators.

This rulemaking is consistent with the FAA's obligation in accordance with section 44701(d) of Title 49 of the U.S. Code that when prescribing a regulation or standard to promote safety or to establish minimum safety standards, the Administrator shall consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. The intent of this rulemaking is to provide the highest possible degree of safety to affected commuter operations.

V.B. Applicability

The FAA proposed that part 121 requirements would apply to all scheduled passenger-carrying operations for compensation or hire in airplanes with a passenger-seating configuration of 10 or more seats and to all scheduled passenger-carrying operations for compensation or hire in turbojet-powered airplanes regardless of seating capacity. (Throughout the rest of this document these certificate holders are referred to as the ''affected certificate holders'' or the ''affected commuters.'') Under the proposal, scheduled passenger-carrying operations in non-turbojet airplanes with 9 or fewer passenger seats, on-demand operations with airplanes with 30 or fewer passenger seats, operations in single-engine airplanes, and operations in rotorcraft would continue to be under part 135.

The proposed rule would also have eliminated the frequency of operations test of five round trips per week which allowed some part 135 scheduled operations to be conducted under the on-demand rules of part 135.

Comments: While no commenters specifically object to applying part 121 requirements to commuter operations in airplanes of 20 to 30 passenger seats, several commenters, many of them small part 135 certificate holders, object to applying part 121 requirements to commuter operations in airplanes of 10 to 19 passenger seats. According to these commenters, the FAA did not sufficiently justify imposing the more restrictive part 121 requirements on operations in these size airplanes and the small certificate holders of these airplanes would not be able to meet the economic burden of the proposal. A few certificate holders state that if the regulations are implemented as proposed they would either have to downgrade their airplanes, reduce the number of passenger seats, or terminate certain services. This is especially the case for small fixed-based certificate holders, who conduct mostly on-demand service with some scheduled service, and for certificate holders who service remote areas such as parts of Alaska, Hawaii, or the islands of Samoa.

Commenters also state that the burden is greater for certificate holders not affiliated with a major airline and that drawing the line at 10 or more includes many small, independent certificate holders. According to commenters, these certificate holders provide a different kind of service from what the larger commuter operators provide.

One commenter, IAPA, states that part 121 requirements should apply to all scheduled passenger-carrying operations, no matter how many seats are on the airplane. According to this commenter, by leaving out the under 10-seat aircraft from the rulemaking, passengers would be exposed to travel on the least safe aircraft operating in scheduled passenger transportation. According to the commenter, most under 10-seat aircraft are piston-engined, with a lower level of engine reliability and performance. The aircraft are frequently operated in harsh environments thereby exposing passengers to higher risks.

Many of the commenters who object to the applicability of part 121 to aircraft with 10 to 19 passenger seats, also object to the definition of ''scheduled'' in proposed § 119.3. According to these commenters, the effect of the current description in SFAR 38–2 of commuter air carriers that includes 5 round trips per week should not be changed. Apparently some small certificate holders that conduct mostly on-demand service also provide one or two scheduled service flights per week. According to these commenters, if they have to upgrade the airplanes and operations to part 121 to conduct these scheduled flights, they will downgrade the airplanes or terminate the service. The commenters state that they cannot afford to comply with part 121, that the service they provide offers one-of-a-kind service to remote places or resorts, and that in some instances there is no ground transportation to these locations.

Several on-demand operators and the National Air Transportation Association (NATA) comment that the FAA should not revise part 135 on-demand requirements either at this time or at any time. These commenters are responding to a statement in Notice 95–5 that additional standards for on-demand air taxi operations may be considered in the future.

The General Aviation Manufacturers Association (GAMA) objects to including all scheduled passenger-carrying operations in turbojets under part 121 regardless of the number of passengers. While GAMA agrees with the FAA's assumption that no turbojets are being used in regularly scheduled part 135 operations, it objects to the applicability because the FAA presented no technical justification for the proposal. GAMA recommends allowing turbojets with a passenger-seating capacity of 9 or less to operate under part 135. Aerospace Industries Association (AIA) also objects that no rationale was presented for including turbojets. AIA states that the proposed rule offers an unfair competitive advantage for normal category turboprops against jets with a passenger-seating capacity of 9 or less. United West Airlines states that it is a small operation with two jets, that it costs $70,000 a year to train its four pilots, and that the proposed rule will put the airline out of business.

Two individual commenters recommend that ''any scheduled operation with airplanes seating more than 9 passengers but less than 19 passengers'' be operated under supplemental rules when that scheduled operation is a code-sharing arrangement with another part 121 scheduled carrier.

FAA Response: The so-called ''frequency of operation'' provision in the SFAR 38–2 definition of commuter air carrier does not exist for current part 121 operations. Affected commuters being upgraded to part 121 by this rule will be required to conduct all of their scheduled operations under part 121 regardless of the number of scheduled operations. However, the FAA has decided to retain the frequency of operations distinction for those operations conducted in airplanes with a passenger-seating configuration of 9 seats or less by revising the definitions of ''commuter operation'' and ''on demand operation'' in § 119.3. Therefore, scheduled operations in airplanes with a passenger-seating configuration of 9 or less (except turbojets) and conducted on a particular route with a frequency of fewer than five round trips per week (regardless of whether one or more airplanes are used on the route) would be conducted under the requirements applicable to on-demand operations.

The FAA believes that, because of the nature of the operation in which small turbojets, which are type certificated under part 25, are used (e.g., transoceanic, long range, international, etc.), they approximate the operations of larger air carriers. For example, part 135 contains no requirements for long-range navigational equipment or long-range fuel considerations. In an effort to increase the safety for passengers carried in those kinds of operations, the FAA has determined that any scheduled operations of turbojet airplanes should be conducted under part 121.

The FAA disagrees with commenters who suggest that commuter operations in code-sharing arrangements should be conducted under the rules for supplemental operations. Code-sharing, although it may affect passengers' perceptions, is a business/marketing arrangement and is not the basis for an FAA regulatory scheme. Scheduled operations in airplanes with 10 or more passenger seats should come under part 121 domestic or flag, as appropriate, not under supplemental rules.

The only operators who currently operate under part 135 on-demand rules that would be required to conduct their operations under part 121 scheduled rules are those who are included because, as discussed above, part 121 does not contain a frequency of operation provision. If circumstances in the future necessitate a change to these rules, commenters will have an opportunity to comment on any proposed changes.

Air Tour Industry Comments: Several comments were received from air tour operators in the State of Nevada and the vicinity of the Grand Canyon. Some of these certificate holders would be affected by the rulemaking because they operate nontransport category airplanes of 10 to 19 seats and because they provide point-to-point service; for example, from Las Vegas to Grand Canyon Airport even though the flights are exclusively marketed as sightseeing and not point-to-point travel. Despite the fact that they technically fall into the category of a commuter operator, these commenters claim that they are more like an on-demand operator and that the proposed rule would penalize them for using larger, safer airplanes than their competitors. One of these commenters states that it does not fly city to city, but flies regularly scheduled flights that take off and land at the same airport. This operator states that, because of the nature of the operation and because of the proposed definition changes, it would be required to comply as a scheduled operator.

According to the commenters, since they have upgraded from 6- to 9-seat airplanes to 19-seat airplanes, they have been required to install ground proximity warning systems (GPWS), traffic alert and collision avoidance systems (TCAS), cockpit voice recorders (CVR), and flight data recorders (FDR), while their competitors have not been burdened by these costs. According to some of these commenters, this equipment is not beneficial in their operating environment because they typically fly in VFR conditions on short-range flights of an hour or less.

The commenters complain that if the proposed rule is implemented, they will be forced to replace the turboprop airplanes with smaller reciprocating-powered planes and will thereby lose some significant safety benefits such as the following:

- The two-pilot crew requirement with captains required to hold an Air Transport Pilot rating.
- Aircraft certificated to higher levels of aircraft performance.
- Aircraft maintenance procedures under the more comprehensive Continuous Airworthiness Maintenance Program.
- Safety equipment such as GPWS, TCAS, CVR, and weather radar.

One commenter lists some of the more ''onerous'' proposed requirements:

- ''Ditchable'' exits in case of water landings.
- Emergency floor path exits.
- Third attitude indicator (in aircraft flown in daylight under visual flight rules).
- Portable protective breathing equipment (PBE).

A commenter points out that the new aircraft performance requirements would limit maximum operating weight at Grand Canyon due to the high altitude.

According to these commenters, switching to smaller airplanes will increase air traffic congestion in the Grand Canyon area, decrease safety for passengers, and double or triple noise levels.

According to one commenter, these certificate holders do not have code-sharing partners and while these certificate holders sometimes provide point-to-point service, the flights are typically part of an all-inclusive tour package which includes ground transfers to Las Vegas hotels, sightseeing flights to the Grand Canyon, and motor coach tours of the Grand Canyon. This is totally unlike typical commuter operations.

Another commenter, however, says that at least one of the air tour operators does use code-sharing with a major carrier and that the offering of its scheduled flights is available by referencing airline computers all over the world.

Some of the commenters cite an NTSB report (''Safety of the Air Tour Industry in the United States,'' June 1, 1995) which states that the implementation of SFAR 50–2 has created a safe operating environment for air tour operators over the Grand Canyon. One commenter quotes NTSB as saying, ''The level of safety of air tour operations could be improved by creating a national standard for air tour operations that contains definitions specific to the air tour industry and specific requirements, including unique operations specifications, to accommodate localized unique conditions, similar to the special conditions contained in SFAR 50–2.''

One commenter states that his company recruits retired airline pilots to provide a high level of experience and stability to the flightcrews.

The Clark County Board of Aviation is concerned that the proposed rule could be devastating to individual certificate holders and adversely affect the vitality of the air tour industry in Southern Nevada.

The Grand Canyon Air Tour Council states that the proposed expanded definition of ''scheduled operations'' is the problem and that the definition was changed with no satisfactory explanation or justification.

The Office of the Lieutenant Governor of Nevada testified at the public meeting held in Las Vegas that compliance would affect a ''$250 million industry that we have worked hard to develop.''

FAA Response: The FAA does not agree that air tour operations are totally unlike commuter operations. Much of an air tour flight is like much of a commuter flight. If an air tour operator is conducting scheduled operations, as defined in § 119.3, in airplanes with a passenger-seating configuration of 10 or more, it must comply with part 121 domestic or flag requirements, as applicable. This includes operators who fly from and return to the same point on a scheduled basis.

The FAA agrees that certain aspects of air tour operations make them appear to be unlike commuter operations. For example, portions of air tour flights are at lower altitudes, typically over rugged and remote terrain, and often in airspace that is congested with other sightseeing aircraft. The FAA has begun an air tour industry project to study the implications of these differences to safety and to develop regulations, as necessary, to address specific features of air tour operations. If regulations are implemented as a result of the project, they would be in addition to current regulations, as is SFAR 50–2 which prescribes requirements for special conditions relating to flights over the Grand Canyon. The FAA project will consider the recent NTSB study cited by commenters. Because certain part 121 and 135 provisions are being recodified into part 119, SFAR 50–2 and SFAR 71 are being updated to conform to this rulemaking.

Alaskan Comments: Several comments were received from certificate holders in Alaska, Alaska government agencies, and others interested in how the proposal will affect Alaskan operations. Currently Alaskan certificate holders conducting scheduled operations in airplanes of 10 to 30 seats comply with part 135. The regulations allow them not to comply with flight time limitations for scheduled operations (§ 135.261(b) and (c)) and instead allow them to follow the regulations for on-demand operations. Alaskan certificate holders using airplanes of more than 30 seats must comply with part 121 supplemental requirements for nonscheduled flights and flag requirements for international and intra-Alaska scheduled operations. Notice No. 95–5 proposed no exceptions for Alaska. Certificate holders whose operations fit the applicability for scheduled operations for airplanes of 10 or more seats would be required to comply with part 121 domestic requirements. International operations would follow flag requirements of part 121 and charter operations would follow supplemental requirements of part 121. Alaskan operators currently operating under part 121 flag rules would have to operate under part 121 domestic rules except for those operations that meet the definition of flag operations in proposed § 119.3.

The basic thrust of the comments is that the Alaska environment is unique and that requiring Alaskan commuter operators to comply with part 121 requirements would be devastating to certain certificate holders in Alaska and therefore to certain segments of air transportation. Furthermore commenters point out that most air transportation in Alaska is conducted in small reciprocating-powered airplanes with passenger-seating capacities of under 10 seats. Therefore, the proposed rule would not have a significant effect on air transportation safety in Alaska and would impose an economic burden on a few certificate holders who provide upgraded, i.e., safer, service. According to commenters, the accident rate for airplanes with under 10 seats is much higher than for turbine-powered airplanes with 19 seats. (Accident data analyzed by the FAA verifies that, unlike the rest of the nation, the part of the commuter fleet in Alaska involved in accidents contains a large proportion of under-10-seat aircraft.)

Peninsula Airways (Penair), as well as other commenters, states that characteristics of Alaska make commuter operations in the State unlike those in other parts of the country. In particular flights are conducted in the same time zone, pilots do not have long commutes to their jobs, flights are not usually conducted between 9 p.m. and 7 a.m., and operations subject to Air Traffic Control (ATC) are not in congested airspace. This rationale is primarily in defense of using the flight time limit requirements of part 135 nonscheduled operations.

Several commenters emphasize the absolute necessity of air travel in Alaska where many of the towns and villages are not accessible by road. They say that Alaskans are dependent on air transportation and the cost of that transportation must remain affordable. High cost items in the proposal, such as the possible need to upgrade airports, the use of a dispatch system, the various equipment requirements, and certain performance requirements, would boost the fares to levels that many residents of Alaska could not afford. The State of Alaska Department of Transportation and Public Facilities states that ''the proposed air carrier and airport regulations could devastate Alaska's heavily aviation dependent economy.''

The Alaska Air Carriers Association (AACA) states that the proposed rule would end the growth of the 10- to 19-seat airplane and would increase fares by 67 to 100 percent. The proposed airport legislation is expected to cost the state $100 million. AACA states that the proposed rule would directly affect only 15 certificate holders in Alaska. Two-thirds of the scheduled air carriers use aircraft with a seating capacity of 10 seats or less.

ERA Aviation, which currently operates under part 121 flag rules, objects to the proposal to operate as domestic/supplemental. It operates over 100 aircraft, fixed and rotary wing, nationally and internationally. The commenter states that for years Alaska part 121 operators have been operating under flag rules, both for scheduled and nonscheduled operations. This has allowed increased flexibility in crew scheduling, which is necessary because of the length of Alaska routes, the lack of facilities in remote locations, and the lack of road networks or other alternate forms of transportation to outlying communities. Section 119.21 would require these carriers to operate under domestic rules, which would decrease crew scheduling flexibility, add substantially to costs, derogate safety, and probably result in the elimination of vital air transportation services to some outlying communities. The commenter says there is no safety justification for such a change because Alaska part 121 operators have established an excellent safety record under existing rules. They say that, at the very least, Alaska carriers currently operating under flag rules should be allowed to continue to operate under flag rules for both scheduled and nonscheduled operations.

A part of the proposal that would have affected several Alaskan certificate holders is the proposal that single-engine airplanes with 10 passenger seats now operating scheduled flights under part 135 would in effect have to remove a seat in order to continue operating in scheduled service under part 135. Single-engine airplanes are ineligible for operation under part 121. The only 10-seat single-engine airplane model involved is the single-engine de Haviland DHC–3 Otter (not to be confused with the twin-engine de Haviland DHC–6 Twin Otter mentioned

elsewhere in this notice). According to AACA and other commenters, there is no possible safety benefit in taking a seat out of an airplane, but the cost to certificate holders who want to continue to use these airplanes in scheduled operations will be significant.

NATA comments that no accident involving the Otter would have been prevented by limiting the seating to 9 passengers. Furthermore, according to the commenter, the FAA cost on this issue is another example of gross underestimation; actual costs will be 15 times higher (almost $22,000 per aircraft). The City and Bureau of Juneau opposes the proposal to remove a seat from the 10-seat airplanes so that they can operate under part 135. This commenter notes that there will be additional flights, additional noise, and additional congestion on the water and in the air. It notes that it is incomprehensible how the reduction of one seat from the Otter will provide an additional level of safety. Wings of Alaska comments that the most cost-efficient floatplane used in southeast Alaska is the single-engine DHC–3 Otter. Because there is no cost-effective replacement aircraft available for float operations that offers the same capacity as the Otter, replacing them is not an option. Wings states that it operates the Otter about 6 months a year. Four communities that do not have runways receive daily service. Wings purchased five 10-seat Otters in '92–93 to improve service to a wilderness sports facility, substantially reducing noise by reducing the number of flights by 50%. Wings notes that considering initial operating experience (IOE) and route check requirements, it is being operated at a higher level of safety than the 10 seat, on-demand aircraft allowed under the rule to be operated in part 135. Wings estimates that the removal of one seat would have cost them $85,000 in 1994. Wings asks that the Cessna Caravan and the Cessna Grand Caravan also be allowed to operate with 10 seats. AACA comments that Ketchikan Air Service, Taquan Air Service, and Wings of Alaska together operate 12 Otters in southeastern Alaska.

The NTSB comments that it intentionally excluded airlines that operate exclusively in Alaska from its study of commuter airline safety because of the unique characteristics of the environment in Alaska. The NTSB currently is conducting a study of commercial Alaska aviation including commuter airlines. The NTSB held two public meetings in Alaska during June 1995 and visited a number of scheduled and nonscheduled part 135 certificate holders to collect information for the study. The NTSB intends to compare flying operations in Alaska with the rest of the U.S. The study is scheduled for completion in 1995. Several other commenters mention the study and suggest that the FAA should wait until the study is completed before making any changes to Alaskan regulations.

ALPA, GAMA, and other commenters state that safety issues are the same in or out of Alaska and that, therefore, Alaska should not be given a blanket exemption from the rulemaking. ALPA and GAMA state that Alaskan certificate holders, as well as certificate holders in other parts of the country, may need to be exempted from certain requirements that are not applicable to the type of operations being conducted and should go through the standard exemption request procedures in such cases.

One comment from an individual pilot in Alaska states that the schedule he flies of 14 days on and 14 days off is exhausting, and that even though he gets 10 hours of rest in each 24 hours, it is not enough over a 14-day period. He is in favor of the proposed flight time limit changes.

Some Alaskan certificate holders comment that they rely on experienced pilots who are familiar with the particular demands of Alaskan operations. Penair states that 10 percent of its pilots are age 60 or over and that 20 percent are over age 52.

Commenters who oppose the rule suggest either exempting Alaska altogether, not including the 10-to-19 seat airplanes in the rule, or allowing under-19-seat airplanes to be covered under the supplemental rules of part 121 rather than the domestic rules.

FAA Response: The FAA agrees with the commenters who state that safety issues are the same in or out of Alaska. The FAA has specifically considered the implications of the proposal on Alaska given its unique characteristics and has determined that the rules should apply to Alaska as proposed. While the NTSB comment on Notice 95–5 states that the NTSB excluded Alaska from its safety study on commuter airline safety, the NTSB states in the report that its findings from the information obtained in the course of the study ''apply to operations in Alaska as well as the other 49 states and U.S. Territories.'' (''Commuter Airline Safety,'' NTSB/SS–94/02). Therefore, this final rule does not provide a blanket exemption for Alaska.

In response to the single-engine airplane issue, the FAA has decided to allow an exception to continue. Currently, several part 135 certificate holders conduct scheduled passenger-carrying operations in single-engine airplanes type certificated with two pilot seats in the ''cockpit'' and 9 passenger seats in the ''cabin.'' Some certificate holders are authorized to conduct scheduled operations in that airplane, the DHC–3 Otter, under daytime VFR, and carry a tenth passenger in the right-hand pilot seat. In Notice 95–5, the FAA proposed to limit all scheduled operations of single-engine airplanes to the carriage of nine passengers, under all conditions. (60 FR 16235, 16273) The FAA has decided to allow the current practice to continue for operators who currently conduct single-engine operations under daytime VFR with a tenth passenger.

Comments on Exemptions/Deviations/Waivers: Currently some certificate holders operating under part 135 that will be affected by this rulemaking have obtained exemptions, deviations, and waivers from certain part 135 requirements.

AACA states that AACA has held an exemption on behalf of its members allowing removal and installation of aircraft seats by certain pilots and trained ground personnel under an FAA-approved program. The commenter states that it is unclear whether or not aircraft operated previously under part 135 in Alaska would be allowed to continue this seat removal and installation under part 121 with an appropriate exemption. AACA states that taking away this option would significantly increase air carriers' costs and diminish their flexibility to utilize aircraft in ''combi'' (combination cargo/passenger) configurations. AACA recommends that all exemptions, deviations, or waivers held by a part 135 operator automatically be carried over into its part 121 operation. As presently written, Notice 95–5 would require compliance with part 121 first, and only then would the FAA evaluate requests for exemptions to part 121 rules. This places additional and unwarranted operational costs on air carriers transitioning to part 121.

FAA Response: The specific exemption referred to by the AACA applies only to operations with airplanes with a passenger-seating configuration of 9 or less, and therefore is not affected by this rulemaking.

However, exemptions issued for operations under part 135 do not automatically continue in effect for operations under part 121. Therefore, affected commuters who will in the future be operating under part 121 must reapply for any exemptions they believe should apply to their part 121 operations after the compliance date of this rule. Also, general exemptions issued to present part 121 operators will

not apply automatically to new part 121 operators so any new part 121 operator will have to apply to be included in these existing exemptions.

V.C. Aircraft Certification

The proposed rule would amend part 121 to require each 10- to 19-passenger seat airplane that is to be operated in scheduled operations and for which an application for type certification is made after March 24, 1995, to be type certificated in the transport category. Affected commuter airplanes are type certificated under the requirements of part 23.

In Notice 95–5 the FAA stated its intent to review the standards of parts 23 and 25 to see if the level of safety intended by part 25 could be achieved for those airplanes with a passenger-seating configuration of 19 or less through compliance with a particular standard of part 23 or another standard, in lieu of the corresponding standard of part 25. On completion of that review the FAA stated its intent in future rulemaking to consider amending part 25 as necessary to accommodate type certification in the transport category of certain types of airplanes previously type certificated in the commuter category.

The FAA also proposed that airplanes configured with 10 to 19 passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply by specified compliance dates with certain performance and equipment requirements in part 121. These performance and equipment requirements are discussed later in this preamble.

In Notice 95–5 the FAA included a table that set out a list of potential modifications that were being considered for application to airplanes having a passenger-seating configuration of 10–19 seats that were type certificated in the commuter category (or a predecessor) if the airplanes are to be used in scheduled operations under part 121. The table included a column that indicated that for 12 of the 38 issues addressed, the FAA had determined that any required upgrade should apply only to airplanes manufactured under a type certificate for which application is made after March 24, 1995. Since these 12 issues will be the subject of a future NPRM, the FAA is not addressing specific comments on the substance or cost of these issues in this document.

Comments: ALPA fully supports the proposal to require newly-designed airplanes to comply with the standards of part 25 and also supports continued use of commuter category airplanes. The commenter does not, however, concur that airplanes type certificated under part 23 normal category (i.e., pre-commuter category) should be permitted to remain in operation with more than 10 passenger seats, even in non-air carrier service. ALPA appears to base its position on differences in performance requirements between commuter category and the predecessor normal category standards.

American Eagle supports the proposed rulemaking and states that, ''while there may be limited circumstances when aircraft design and/or manufacture may preclude or delay compliance with FAR part 121 or FAR part 25, cost and weight considerations should not be an acceptable barrier to the increase in safety which is derived from applying the higher standards of aircraft airworthiness, airline operations and passenger safety which those regulations provide.''

In contrast, six other commenters do not believe that any propeller-driven airplanes with 10 to 19 passenger seats should be required to meet the transport category standards of part 25. Although the commenters' reasons vary, the comments focus on three basic issues: (1) Commuter category standards are appropriate for airplanes of this class; (2) there is no evidence that safety would be enhanced by requiring future airplanes to comply with part 25; and (3) the cost of complying with part 25 would be prohibitive.

Similar comments concerning recertification of existing part 23 airplanes under part 25 were also offered, apparently under the misunderstanding that airplanes already type certificated, or derivatives of those airplanes, would have to be recertificated under part 25.

Some commenters believe that the airplane certification issue is of such magnitude that it should be held in abeyance for a separate future rulemaking program. In this regard, the commenters assert that extensive changes to part 25 would be needed to accommodate the airplanes otherwise certifiable under part 23 commuter category and that those changes would entail a considerable expenditure of FAA resources. They further believe that any such changes should be subject to harmonization with corresponding standards of the European Joint Aviation Requirements (JAR).

Several commenters cite the FAA's 1977 proposal to require all airplanes used in air carrier service to meet part 25 transport category standards. That proposal was later withdrawn. According to commenters, the part 23 standards of that era were considerably different from those of today's part 23 commuter category. The level of safety expected by the public today is much greater than that tolerated in 1977.

A number of other commenters address the proposed retrofitting of existing part 23 normal and commuter category airplanes to meet certain part 25 standards. Those comments are addressed in the section-by-section portion of this preamble (Section VI).

One commenter has developed and produces a unique propulsion system in which two turbine engines drive a single propeller through a common gearbox. In addition to the installations already being made in existing airplanes, the commenter anticipates a future installation of this system in an airplane of entirely new design. Since any new model would have to be type certificated under the provisions of part 25 in order to be eligible for operation under part 121, the commenter requests that part 25 be amended to accommodate airplanes with this or similar propulsion systems.

FAA Response: Rather than forcing the retirement of part 23 normal category airplanes, as recommended by ALPA, the FAA proposed in Notice No. 95–5 to permit their continued use in air carrier service provided certain changes were made on a retrofit basis to enhance their level of safety. Banning those airplanes would be extremely costly, but most importantly could result in an unintended safety decrement. Indeed, the FAA's analysis indicates that moving too quickly on the imposition of part 121 standards could have the unintended effect of lowering the level of safety because operators would not be in a financial position to quickly obtain new airplanes and currently there are not enough replacement airplanes available that meet the higher standards. The result could be a shift from 10- to 19-seat turbopropeller airplanes to 9-seat or less reciprocating engine airplanes, which have an even higher accident rate.

The six commenters' assertions that commuter category standards of part 23 are appropriate for airplanes of this class and that there is no evidence that safety would be enhanced by type certification under part 25 are, to a certain extent, correct. Through a number of recent amendments and pending amendments, the level of safety established by the commuter category has been and is being enhanced considerably. In many instances, commuter category airplanes must meet standards that are the same as, or very similar to, those of part 25 transport

category. Requiring future 10- to 19-passenger seat airplanes to be type certificated under part 25 would complete this effort to ensure that these airplanes used in air carrier service meet the same aircraft certification standards as the larger airplanes.

In response to comments that part 23 airplanes could not be type certificated using part 25 standards, the FAA notes that it did not propose in Notice No. 95–5 that part 23 normal or commuter category airplanes presently in operation would have to comply with part 25 standards for type certification. Instead, it proposed that part 23 airplanes that will be required to be operated under part 121 will have to comply with certain part 121 equipment and performance requirements.

In response to the individual comment on a unique propulsion system, although the commenter's request is beyond the scope of this rulemaking, it will be considered during the review of part 25 discussed above.

V.D. Flight Time Limits and Rest Requirements

The FAA proposed that the part 121 domestic flight time limits and rest requirements would apply to affected commuter operators when conducting operations within the United States. Under the proposal affected commuter operators, when conducting operations to or from the United States, would comply with the flag flight time limitations and rest requirements of subpart R. Additionally, if these certificate holders use these same airplanes for nonscheduled operations, those certificate holders would be required to comply with supplemental flight time limitations and rest requirements of subpart S of part 121.

As stated in Notice 95–5, since the flight time limitations and rest requirements for flag and supplemental operations were not updated in 1985 when domestic limits were, the FAA has developed an NPRM that is being issued concurrently with this final rule. (See elsewhere in this issue of the Federal Register.)

Comments: Atlantic Southeast Airlines (ASA), Regional Airlines Association (RAA), and Big Sky Airlines comment that the FAA should provide specific and scientifically-based data to support this significant change. Fairchild Aircraft adds that the additional time off duty provided by the proposal will not necessarily be used for rest. NATA comments that there are differences in part 135 operations that justify a different set of flight time limitations and rest requirements: part 135 operations are generally confined to a particular area, pilots of smaller certificate holders rarely commute a long distance to and from work, and pilots have fewer overnight stays as part of their schedules. Air Vegas comments that unless an exception is provided, seasonal operators would have to hire additional crews in order not to exceed the 7-day limit of 30 hours or the monthly limit of 120 hours. This commenter notes that short-term employment of such pilots is next to impossible. Morton Beyer and Associates comments that the cost of hiring additional pilots is expected to add another $250 million to airline costs. Twin Otter International comments that the 1,200 yearly limit in part 135 is based on the part 121 100-hour-per-month concept, and that the regulations really are similar.

Several individuals strongly urge the FAA to adopt the part 121 standards for the upgrading commuter pilots. American Eagle comments that it applies part 121 domestic rules to its part 135 operations and believes that all air carriers providing commercial passenger service should use either the domestic or flag rules of part 121.

One individual notes that the reduced rest provision in part 135 allows for only 8 hours of rest between scheduled flights. Another individual comments that commuter pilots have a high frequency of takeoffs and landings, fly in the busier low-altitude airspace, deal with more controllers per flight mile, and deal with more weather than their part 121 counterparts. One person comments that certificate holders routinely schedule 3–4 hour breaks to preclude violations of the 8 hours of flight in 24 hours rule; however, the effect of this is to stretch out the duty day. The result is a higher duty time to flight time ratio which is not accounted for in the current rules. IAPA supports the proposal but also expresses concern that the current regulations fail to count, as part of duty time, the time period when flightcrews are on reserve duty, standby duty, or carrying a pager or other telephonic device. IAPA urges the FAA to treat reserve or standby duty as duty time.

ALPA comments that while the upgrade to part 121 will result in an improvement in flight time limits and rest requirements, part 121 will continue to be deficient in this area until additional rulemaking action is taken, as promised by the FAA.

Alaska commenters argue for maintaining the current regulations. ERA Aviation estimates that if the proposed rule is adopted, it would necessitate at least a 15% increase in the number of pilots it would need, resulting in a $500,000+ increase in costs. Penair finds four reasons for excepting Alaska: Operations are conducted in the same time zone, few Alaska pilots commute to their jobs, less than 5% of Alaska operations occur between 9:00 p.m. and 7:00 a.m., and Alaska does not have the congested ATC operations which are found in the lower 48 states. AACA also presents this argument, adding that going from 1,400 hours of duty per year down to 1,000 represents a 29% decrease in productivity. Other Alaska certificate holders, e.g., Wings, Northern Air Cargo, Taquan Air Service, Tanana, endorse the AACA comment.

One individual commenter from Alaska opposes any attempt to create exceptions to the requirements for Alaska. This person supports the assertion that Alaskan operations are basically the same as state-side operations and should be afforded no special exemptions.

This individual, a pilot who flew over 1,300 hours last year, states that there were many consecutively scheduled 14-hour duty days and many canceled days off. Ten hours of rest may sound adequate, but not for days on end. The individual questions the logic that one is more rested in one geographic area than in another. According to the commenter, duty cycles that are unsafe in the lower 48, are also unsafe in Alaska.

Another individual from Alaska states that the FAA has shown no data to indicate any problem with the provisions of § 135.261(b), which allows Alaskan scheduled operators to use § 135.267. The individual states that in 1994, he flew 1320 hours, had 173 days off, slept in his own bed every night, and never had less than 10 continuous hours of rest in any 24-hour period. He believes he probably had more rest and time off than the average long-haul part 121 pilot. The commenter states that the proposed flight/duty time limits would cause scheduling nightmares for operations in rural/remote parts of Alaska.

FAA Response: The FAA is holding in abeyance a final decision on the proposed imposition of current part 121 flight time limitations and rest requirements on affected commuters pending a review and disposition of comments on the separate flight and duty rulemaking in which the FAA proposes to overhaul all the flight and duty rules. The separate rulemaking, if adopted, would harmonize flight and rest requirements for all part 121 and part 135 carriers. The FAA anticipates that the separate rulemaking will result in a net cost savings to the industry as

a whole. In the meantime, affected commuters will continue to operate under the current part 135 flight and duty rules. This will prevent needless expenditure of resources by affected commuters who would have to implement flight and rest provisions under the commuter rule proposal and then later might have to change their system to comply with the separate rulemaking. For the same reasons the FAA will allow part 121 certificate holders operating in Alaska and Hawaii to continue to follow the flight and duty rules of part 121 applicable to flag operations, even though under this rulemaking these certificate holders are now classified as conducting domestic operations.

Accordingly, §§ 121.470, 121.480, and 121.500 include an exception for affected commuters allowing that they continue to comply with flight time limits and rest requirements of part 135. Additionally, § 121.470 will allow existing Alaska and Hawaii intrastate scheduled domestic operations to continue to be conducted under flag rules.

V.E. Age 60 Rule

Section 121.383(c) prohibits a certificate holder from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. Part 135 has not had any such limitation. The FAA proposed to impose one age limitation on all pilots employed in part 121 operations, including those pilots currently employed in affected part 135 scheduled operations. The FAA stated in Notice 95–5 that if it determines that it is appropriate to propose a different age limit in another rulemaking action, it will propose to apply the revised limitation to all part 121 operations, including the pilots in commuter operations.

Comments: The age limitation question was the subject of over 2,000 written comments (including about 1,000 postcards from members of an airline pilot organization) and oral presentations at public meetings. The overwhelming majority of these comments concern the general question of whether there is a need for an age limit in part 121, and do not address any particular aspects of applying an age rule to commuter pilots.

Several commenters, however, state that if commuter pilots are subjected to an age limit, the FAA should adopt a phased-in implementation schedule to avoid abruptly ending the careers of pilots who had not planned on retiring at age 60. Another commenter states that it hires over-age-60 retired part 121 pilots.

FAA Response: As discussed above, the FAA has identified a strong need to enhance the safety of commuter operations. Commuter airlines are carrying an increasing number of passengers over an increasing number of miles. While safety has improved over the past two decades, commuter airlines operating under part 135 continue to have a higher accident rate than domestic part 121 airlines. The FAA can no longer justify most distinctions between parts 121 and 135 commuter operations.

The part 121 regulatory scheme provides a network of safety features. Because most accidents are caused by human error, rules designed to enhance the performance of pilots are among the most valuable in reducing the number of accidents. Elsewhere in this preamble the FAA discusses other provisions that serve this purpose, such as the critical role of the aircraft dispatch system in double checking the work of the pilot and providing updates on weather and alternate airports. The training requirements for commuter pilots are being upgraded, and eventually part 121 flight and duty time rules or the newly proposed rules will apply to them. The Age 60 Rule provides an additional measure of safety by reducing the risk that age-related degradation will affect pilot performance. A pilot may have the best training in the world, and be well-supported by an aircraft dispatch system, but if the pilot suffers from a subtle age-related degradation in performance, safety will be reduced. Also, the potential safety benefits of training and dispatching may be reduced by human safety lapses that could occur or do occur more frequently with age.

The ''Age 60 Rule'' was adopted by the FAA in 1959 (24 FR 9767, December 5, 1959). At the time Notice 95–5 was issued, the FAA was also considering whether, in the interest of safety, the Age 60 Rule should be retained as is or revised to allow pilots to continue to fly in part 121 operations past their 60th birthday. The FAA completed its review of the Age 60 Rule. In a Disposition of Comments (Disposition) published in the Federal Register, [cite], the FAA announced that it will not propose to change the Age 60 Rule at this time. The Disposition thoroughly discusses the various issues regarding the need for an age limitation and what that age should be, including the issues raised in the comments to Notice 95–5 that concern the Age 60 Rule in general, and those comments will not be further discussed here. This rulemaking deals only with the application of part 121 rules to affected commuter operations.

In Notice 95–5 the FAA proposed a general compliance date (that is, a date on which most provisions must be complied with) of 1 year after publication. The Notice also proposed delayed compliance dates for several of the requirements (other than the age limitation), to provide time for the work necessary to comply with the proposed requirements. In this final rule, the FAA has adopted a general compliance date of 15 months after the date of publication of this final rule in § 121.2(c), and also has adopted delayed compliance dates for a number of requirements, giving the air carriers 2, 4, or more years to comply with certain of the new requirements.

In response to the comments requesting delayed compliance dates, and after further evaluation, the FAA has considered that there are factors warranting delay in the compliance date for the Age 60 Rule, as it applies to those affected commuters that now will be brought under part 121. The lack of an age limitation in part 135 has created reasonable expectations on the part of both the affected commuter operators and pilots regarding the length of time that the pilots would continue in service: Some of those operators have spent money to hire and train pilots with the expectation that they would serve past the age of 60; and the pilots have not had to plan on leaving their positions at age 60. In fact, certain affected commuters appear to have a practice of hiring retired part 121 pilots, and will no longer be able to do so.

Further, this rule requires the affected commuters to make extensive changes in equipment, personnel, and procedures before the general compliance date. Also, final rules have been adopted that impose new requirements for training, including standardized pilot training and crew resource management training. The affected commuters operators should not be required to stop using the services of their over-age-60 pilots in scheduled operations (10 or more seats) and train replacements until these new programs are in place, and the training can be under the new programs.

Accordingly, the FAA has determined that the Age 60 Rule, as it applies to certain pilots, should have an extended compliance date. As it applies to pilots newly hired by commuter operators, the Age 60 Rule will apply on the general compliance date indicated in § 121.2(c). Until that date, there will be no age restrictions on the pilots of commuter

operations that are upgrading to part 121. After that date, the affected commuters will no longer be able to hire pilots who have reached their 60th birthday (except for pilots who as of that date were employed as pilots for another affected commuter). However, pilots who are employed by affected commuters on that date will be able to continue to serve until December 20, 1999, after which the Age 60 Rule will apply to every pilot under part 121.

The delay in applying the rule will provide some relief from the difficulties discussed above. The 4-year compliance period for these pilots will permit the affected commuters to recover services for several more years from those pilots in which they recently have invested in training. Delaying the application of the rule to new hires until the general compliance date will give affected commuters time to adopt new hiring practices, at a time when the operators will have many other new requirements under this rule to comply with. The 4-year compliance period for pilots will give them time to plan for retirement or for changing jobs. It will also give affected commuters additional time to make careful selections of well-qualified pilots and train them under the new training requirements. And, the operators will not have to replace all of their over-age-60 pilots at once, at a time when so many other new requirements must be complied with.

V.F. Dispatch System

Parts 121 and 135 require certificate holders to exercise operational control over all flights conducted by the certificate holder. ''Operational control'' is defined in 14 CFR part 1 as ''The exercise of authority over initiating, conducting and terminating a flight.'' Operational control consists of making decisions and performing activities on an ongoing basis that are necessary to operate specific flights safely. These activities include among other things crew and airplane scheduling, reviewing weather and NOTAM's (Notices to Airmen), and flight planning.

Parts 121 and 135 provide for three general types of operational control systems based on the kinds of operations and the complexity of operations: aircraft dispatch, flight following, and flight locating systems. Part 121 domestic and flag operations require a dispatch system, part 121 supplemental requires a flight following system, and part 135 requires a flight locating system for any flight for which a flight plan is not filed. In Notice 95–5, the FAA proposed that the affected commuters would be required to have a dispatch system. Affected commuters would have to meet all part 121 dispatch requirements, including dispatcher qualification requirements, recordkeeping, and flight release requirements. As proposed, affected commuters that would conduct some nonscheduled flights under part 121 supplemental rules could use a flight following method for the nonscheduled flights.

The FAA also stated in Notice 95–5 that Alaskan operations pose certain unique problems and requested comments on alternatives that could be considered for Alaska.

Comments: Two individuals suggest that the use of a dispatcher and dispatch system be an option for 10- to 19-seat certificate holders, recommending compliance with existing subpart F of part 121. Both commenters believe that the FAA should seriously consider permitting, at least on an interim 36-month basis, compliance with subpart F flight following requirements in lieu of subpart E dispatch requirements for transition carriers. This will, in their opinions, gain the early momentum of the industry by making it possible for many certificate holders to transition early. A long lead time is necessary to qualify existing personnel as dispatchers under existing part 65. The commenters remind the agency that during the early 1980's, by the FAA's own rules, 20- to 30-seat aircraft were subject to part 121 supplemental rules, including the flight following requirements of subpart F. One of these individuals also states that interim compliance with subpart F flight following requirements would ease the transition to subpart E dispatch requirements for affected certificate holders.

NATA comments that the FAA lacks understanding on the types of operations 10- to 19-seat certificate holders typically fly and recommends a flight following system instead of a dispatch system. NATA states that many small, independent carriers operating aircraft with 10 to 19 seats may have only 2 to 4 of these types of airplanes and may operate them over only a few selected routes. According to NATA, many of these carriers conduct on-demand operations in addition to their scheduled activity. NATA believes, along with several other commenters, that for operations such as these, to implement a full dispatch system will result in significant cost with little or no benefit.

RAA and other commenters suggest that the FAA identify specific safety objectives in requiring a dispatch system for short-haul certificate holders.

One commenter believes that a formal dispatch system for all scheduled air carriers should be required, but points out both the pros and cons of requiring such a system. This commenter, as well as others, states that pilots may be shouldering many additional responsibilities other than flying the aircraft in an effort to minimize the cost of flight operations. Due to the task saturation of pilots and other crewmembers, functions involving flight planning, weather analysis, and weight and balance calculations may not be thoroughly performed. According to the commenter, the majority of commuter pilots are, as a rule, very young and inexperienced. These crews must continually perform at peak levels of performance both on the ground and in the air.

According to this commenter, as well as others, the use of the flight dispatcher would increase safety, operational efficiency, and productivity. The duties of filing the flight plans, checking NOTAMs, planning fuel requirements dictated by weather, and obtaining ATC routing would be completed by the dispatcher prior to the crew arriving for the flight. Optimum routes based on known ATC or weather delays would be filed, resulting in substantial fuel savings and improved arrival and departure reliability. The pilots would now be able to concentrate on flying and be able to relax and rest between flights. Flight could be more effectively managed, thus saving fuel, maximizing aircraft utilization, and passenger satisfaction.

On the other hand, according to the commenter, mandating the dispatch system for part 135 air carriers may create some heavy financial burdens. It will require a facility, communications hardware for the facility and the aircraft, trained personnel, and training for dispatchers. The initial capital outlay would not be recovered for several years. According to the commenter, this mandate will place severe constraints on many less established carriers and may actually result in bankruptcy for some.

Many commenters are in favor of the role of the aircraft dispatcher in operational control issues. One commenter states that the requirement for a formal dispatch system is long overdue.

One commenter believes that dispatch centers might create a sense of complacency on the part of the flightcrew and, along with other commenters, thinks that automated flight planning and flight following information should be used in lieu of dispatchers and dispatch centers. Two

of the commenters advocating automated flight following systems state that the three accidents cited by the FAA in Notice 95–5 would not have been prevented by the use of a dispatcher. One commenter states that in his experience PIC's typically check dispatcher computations but do not duplicate the computations as the FAA stated in Notice 95–5.

The NTSB states that in its 1994 study report, it examined the differences in flight dispatch requirements between parts 121 and 135. The NTSB found that, in the absence of support from licensed dispatch personnel, pressures on commuter airline pilots to accomplish several tasks between flights in shorter periods of time might increase the risk of critical mistakes that could jeopardize the safety of flight. As a result, the NTSB recommended that the FAA require each principal operations inspector (POI) to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights. This review was to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. According to NTSB, the proposed rulemaking, if implemented, would meet the intent of the safety recommendation (A–94–193).

ASA, RAA, and Gulfstream International Airlines support many of the elements of the dispatcher rule. They state that flight dispatch systems that are required under part 121 are extensive since they address the dispatch and en route communications needs for a span of air carriers from international airlines with worldwide flight operations to the largest U.S. regional carriers. ASA supports the requirement for licensed dispatchers, believing that the most qualified candidates for licensing as dispatchers are the individuals currently employed as flight followers. These commenters request that the criteria in § 65.57 be examined to provide guidance for granting a dispatcher certificate based on practical experience as a flight follower under part 135 operations. According to the commenters, many flight followers have passed the written portion of the dispatch license but have not attended formal dispatch school and do not hold licenses. However, they may have extensive practical experience in scheduled air carrier operations performing what is essentially a dispatcher function. According to these commenters, the criteria contained in § 65.57 includes experience in scheduled military operations. The commenters believe that if military experience is applicable, the experience of a flight follower with a scheduled airline should qualify. These commenters also point out that the practical portion of the dispatcher license is administered using a Boeing 727 aircraft. The commenters believe that while many of the functions and decision making circumstances would be the same, the experience of part 135 flight followers, managing flights of high performance turbopropeller-powered aircraft is a considerably more significant and practical measure of their capabilities than military experience or demonstrating their skills in managing a turbojet operation. The commenters believe that the cost and time to send current flight followers to a formal dispatcher school is not justified.

Samoa Air comments that since its longest flight is only 70 miles (35 minutes), a dispatch system would not enhance or change any of its current requirements. Samoa has established VFR and IFR fuel requirements to all of its destinations and the requirements do not change. The only alternate airport is the destination airport. Samoa also states that § 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for operations. Section 135.213 allows the pilot in command to use various other sources, including his own weather assessment, for VFR operations. Of the four airports Samoa serves, only one (departure airport) is in controlled airspace with weather reporting facilities and instrument approach procedures. Enroute and terminal weather conditions are received through the ATC tower from their weather station. VHF communications with the tower cover almost the entire route, so the aircraft has ready access to any weather information available and direct information on the status of communications, navigation, and airport facilities. A dispatcher would not enhance safety but would add significant cost. If Samoa is required to provide weather conditions at each airport to the pilot from an approved source and the pilot can not assess the weather himself, the rule change could eliminate all of Samoa's present operations.

Similarly, Inter Island and Air Vegas comment that the requirement for enroute weather reporting is unfeasible because of minimal weather reporting facilities in the certificate holders' regions. Air Vegas also comments that radio communication in mountainous terrain would be difficult if not impossible with VHF radio systems because mountains block radio transmission.

Air Vegas comments that all ''dispatcher duties'' are currently being accomplished by personnel in the operations department, station managers, and company pilots. All flight following is being done by telephone. The commenter states that current flight following procedures meet part 135 requirements and are operationally safe and efficient.

Mesa Airlines comments that due to its short flight segments and the lack of significant weather changes in the areas in which it operates, a dispatch system is not needed. Mesa believes that all enroute communications can be accomplished by ATC.

AACA states that the requirements of subpart E come at a time when the availability of weather information in Alaska has been identified as a significant issue adversely affecting aviation activities (proceedings of an NTSB ''Aviation Safety in Alaska'' forum, May 1995).

The Airline Dispatchers Federation supports the dispatch proposal and agrees with the upgrading of current commuter facilities to dispatch centers. It believes this upgrading is necessary because of the extensive use of code-sharing by the aviation industry. The commenter is not in favor of amending part 121 dispatch rules for certificate holders of the 10- to 19-seat category. The commenter provides its estimate of costs to certificate holders that could be affected by the implementation of this rule. The commenter notes that the costs provided by some certificate holders may not be accurate. For example, cost estimates concerning flight planning and performance issues are inaccurate since several airlines use bulk stored flight plans and performance information taken directly from aircraft flight manuals for fuel planning. The commenter also provides its assessment of various aircraft accidents for which it believes dispatchers could have made a difference in changing events that led to the accident (crew fatigue, lack of management oversight, operational control issues, late arriving weather information).

ALPA comments that dispatchers should be required to complete their 5-hour inflight operating experience in 10- to 30-seat aircraft, not in larger 60-seat aircraft, as currently allowed. ALPA proposes that § 121.400(b) be amended by adding a group specific to propeller-driven aircraft with a seating capacity between 10–30 seats.

AACA comments that due to the operating environment of Alaska, the pilot and not the dispatcher is in a

better position to access and evaluate operational control information. The commenter believes that scheduled operations in Alaska more closely resemble the operations conducted under supplemental rules and not domestic or flag operations. The commenter notes that pilots frequently are not in radio communication with company offices directly, but could communicate via Flight Service Station, ATC, or other aircraft. According to the commenter, enroute and destination weather conditions are either not accessible or not available at any time from ''official'' sources. The commenter notes that three affected certificate holders in Alaska presently have a part 121 type dispatch system in place. AACA further states that the assumption that estimated fuel savings by dispatchers would offset the cost of establishing a dispatch system is not true. AACA recommends that the FAA adopt the flight following supplemental rules of part 121 for Alaskan 10–19 seat certificate holders. AACA also recommends that current part 135 personnel be ''grandfathered'' for dispatcher certificates if they have been employed as flight followers. The commenter notes that the practical experience dealing with turboprop aircraft and flight planning may be lost to the industry if flight followers are required to take extensive dispatcher training courses, pass a written and practical test, and lose time and money on the job while they obtain an FAA dispatcher certificate.

FAA Response: The FAA anticipates that requiring operators to have a certificated dispatcher double check the work of the pilot and provide the flightcrew with updates on weather and alternate airports can reduce human factor errors. With a dispatcher system, the chances of pilot miscalculations or oversights could be reduced. Moreover, a dispatcher can assist the flightcrew in making plans for an alternate airport (which might be necessary due to weather problems, air traffic control problems, airplane equipment problems, fuel problems, etc * * *) during the flight while the crew focuses on flying the airplane.

The FAA disagrees with the recommendation to make the use of a dispatcher and dispatch system optional since that would not address the safety issues involved. The FAA also disagrees that a flight following system is an acceptable alternative to a dispatch system or that dispatch systems are not needed for limited flight distances if there is adequate weather reporting facilities. The use of a dispatch system is based on the type of operation (scheduled), and not the distance of a flight, the number of aircraft, or the type of aircraft being flown. Flight following systems are used for nonscheduled operations, and could be used for nonscheduled operations by affected commuters under the supplemental rules of part 121. Note: The dispatch system requirements apply only to scheduled passenger-carrying operations.

The FAA disagrees with the basic idea that the decision making process of operational control of aircraft can be made by automated means. While automation has improved the accuracy and timeliness of flight planning, weather information, and NOTAMs, nothing so far has replaced the decision making capabilities of a certificated dispatcher. Dispatchers receive training in subject matter beyond just flight planning, e.g. crew resource management, hazardous materials regulations. These subjects are just a small representation of the subject matter an aircraft dispatcher must know in order to make operational control decisions.

The FAA agrees with the comment that dispatchers are usually in a better position to review weather reports and forecasts than pilots hurrying to accomplish other postflight/preflight aircraft duties. Operational control issues are enhanced when both the pilot in command and the aircraft dispatcher are jointly responsible for the safe conduct of a flight. As several commenters point out the overall level of safety is enhanced when a dispatcher is available to assist and back up the pilots who already may have numerous responsibilities in addition to flying the airplane. Thus, while it may not be possible to pinpoint accidents that have actually been prevented by a dispatch system, there can be little doubt that the existence of a dispatch system contributes to the overall high level of safety of scheduled operations under part 121.

The FAA does not agree that use of dispatchers would lead to complacency on the part of the flight crewmembers. Section 121.663 states that for each domestic and flag operation, a dispatch release must be prepared based on information furnished by an authorized dispatcher. The pilot in command and an authorized dispatcher shall sign the release only if they both believe that the flight can be made safely. Dispatchers provide the necessary resources and expertise needed to review operational control issues.

In response to comments that in some companies ''dispatch'' functions are being adequately performed by individuals from three separate departments (operations, station managers, and company pilots), the FAA finds that operational control decisions can not be effectively made by three separate groups of individuals. The perception is that ''whoever is available'' makes the decision. For effective operational control, the dispatch process should be standardized and consistent.

In response to NATA's and others' comments on the nature of 10- to 19-seat certificate holders, the FAA finds that these certificate holders are not unique. The same situation currently exists for some part 121 certificate holders who are required to maintain dispatch systems.

In response to comments on the issue of limited areas of operation and short flight duration, the requirement for a dispatch facility is not based on distances, the type of aircraft, or weather patterns alone. It is the type of operation (scheduled) an air carrier is currently operating under that determines if dispatch systems are required. The role of the aircraft dispatcher in the operational control of aircraft provides an enhancement to safety that has clearly been established through years of operations by many air carriers in both domestic and flag operations. Continuous communications could be accomplished with HF radios or through satellite communications, both of which can be provided through vendors.

The FAA agrees with commenters that for some part 135 certificate holders, personnel will first have to acquire the necessary certificate and then complete required air carrier training requirements for dispatchers. The average dispatcher school curriculum lasts 5 weeks and usually includes instruction on both the written and practical tests. The FAA believes that some part 135 personnel already possess aircraft dispatcher certificates and that these personnel would be required to attend only the air carrier's dispatcher training program. Regardless, once an air carrier employs a certificated dispatcher, company training would have to be completed. That training would entail 40 hours of basic indoctrination, differences training, initial ground/transition of 30–40 hours (based on the type of aircraft), and a competency check (see § 121.422).

While the FAA does not agree with AACA's recommendation to ''grandfather'' dispatcher certificates to current flight followers or flight locating personnel, § 65.57 outlines a means of providing credit for previous experience in order to take the practical test. All

dispatcher applicants must complete the appropriate written and practical tests before a certificate can be issued. The FAA agrees that training costs will be incurred to prepare current flight following or flight locating personnel to qualify for a dispatcher certificate, regardless of who pays for the training. Replacement personnel will be needed if the decision by the certificate holder is to send current employees to dispatcher training.

There is no requirement for dispatchers to attend a formal school. Section 65.57, entitled experience requirements, allows several options in lieu of a formal school.

In response to specific requests to expand the criteria in § 65.57 (aircraft dispatcher experience requirements) to include personnel assigned to flight locating and flight following under part 135, the FAA believes that some part 135 experience is acceptable as equivalent experience in § 65.57. Through current policy and guidance provided to FAA inspectors, a review on a case-by-case could be accomplished to ascertain if an applicant has equivalent experience.

In response to comments on the current format of the dispatcher practical exam, § 65.59 requires an applicant for an aircraft dispatcher certificate to pass a practical test with respect to any one type of large aircraft used in air carrier operations. Further, current practical test standards require dispatcher applicants to exhibit adequate knowledge of applicable aircraft flight instruments and operating systems. The scope of the practical test allows for turboprop aircraft and representative commuter operations. Practical tests are developed by the inspector conducting the test and can be designed for any type of large aircraft, including turboprop airplanes.

There is only one dispatcher written examination, the Airline Transport Pilot question book. The selection sheet has questions applicable only to dispatchers and not based on any particular make and model of aircraft. The FAA is considering developing written tests geared to commuter-type operations. However, the current written exam is valid in that it tests for areas common to all make and models of aircraft. The test requires knowledge of various subject areas, i.e. the ability to interpret weather information, interpret regulations, handle emergencies, compute weight and balance, etc.

The FAA disagrees with the ALPA recommendation to require dispatchers to receive 5 hours of operating experience in aircraft they will actually dispatch. Section 121.463(c) requires the dispatcher to satisfactorily complete at least 5 hours of operating familiarization in one of the types of airplanes in each group he is to dispatch. Section 121.400(b) includes all sizes of propeller-driven aircraft under group 1. Therefore, the FAA allows dispatchers to complete the operating familiarization in airplanes that are not exactly the same size or configuration as the ones they will dispatch.

V.G. Airports

Section 121.590 requires that no air carrier or pilot conducting operations under part 121 may operate an airplane into a land airport in the U.S. (or territory, etc.) unless the airport is certificated under 14 CFR part 139. Section 135.229 states that no certificate holder may use any airport unless it is adequate for the proposed operations.

Part 139 prescribes regulations governing the certification and operation of all land airports that are served by any scheduled or nonscheduled passenger air carrier operating airplanes with a seating capacity of more than 30 passengers. The FAA's authority is limited by statute (49 U.S.C. 44706(a)) to the 30-passenger-seat dividing line. The FAA, in conjunction with the Department of Transportation, has sought legislation that would grant the agency the authority to certificate any airport that receives scheduled service by a certificate holder utilizing airplanes designed for 10 or more passenger seats.

Accordingly, pending Congressional resolution of this issue, affected commuters are permitted to operate into other than part 139 certificated airports. If the FAA receives expanded authority over airport certification, it would propose rulemaking standards that are sufficiently flexible to cover the range of airports presently served under part 135.

Comments: Nine comments were received on this issue, with the major concern being that airport legislation currently being considered may include requirements that some communities may not be able to afford which would negatively affect air service to these communities.

The Las Vegas Department of Aviation comments that it has purchased and upgraded satellite airports in the Las Vegas area to help relieve the congestion at the McCarran International Airport. The commenter is concerned that the Clark County Department of Aviation, the Grand Canyon Tour Operators, and the Las Vegas Department of Aviation may not be able to afford additional airport upgrades. This would cause certificate holders that currently operate out of the non-certificated outlying airports to move their operations back to McCarran, thereby increasing traffic congestion and in-flight delays.

NATA and Commuter Air Technology concur with the FAA proposal to allow part 135 certificate holders to continue to operate with existing airport requirements, but are concerned about the airport expansion program. NATA prefers that no new airport legislation be adopted and that the proposed regulatory allowance for noncertificated airports be made permanent.

A comment from Fairchild Aircraft mentions the Essential Air Service Program enacted by Congress that guarantees air service to small and medium size communities. Fairchild says that the commuter industry responded to that program and provided essential air service to small and medium communities, and that those communities may not be able to afford the proposed airport expansion program.

Other commenters state that it would not be feasible to upgrade smaller airports to part 139 standards. One certificate holder states that of the five airports it serves only one meets part 139 standards; at the other airports where the certificate holder provides essential air service ''there is no aircraft rescue or fire fighting equipment, airport guidance signs, airfield inspection procedures, airport staff, snow and ice control plan, or airfield pavement maintenance. . . .''

The American Association of Airport Executives (AAAE), RAA, Airports Council International-North America, and the National Association of State Aviation Officials would like the airport expansion issue referred to an ARAC committee before seeking federal legislation, to allow ARAC to develop a cost-effective response to NTSB recommendations that takes into account the difference between small airports that serve rural communities and large airports near major cities.

ALPA believes that the FAA should require commuters to operate out of part 139 certificated airports in the interest of one level of safety. ALPA recognizes that some airports in remote sites will not be capable of complying with all part 139 requirements. However, ALPA does not believe that an exemption should be provided for aircraft with passenger-seating capacities of 30 or less. Rather certificate holders that serve small airports should apply individually for an exemption or waiver.

Commuter Technology expresses concern that a revised part 139 may result in the application of airplane

operator security regulations of part 108 and the airport security regulations of part 107 to air carriers using aircraft with a seating capacity of 30 or fewer seats. The commenter believes that the ARAC committee that is tasked with recommending revisions to part 139 should also be tasked with restricting or eliminating the applicability of part 107 to small airports. According to the commenter the application of parts 107 and 108 to commuter air carriers and the airports that serve them could have a radical effect on the economic viability of the air carriers and airports.

FAA Response: The FAA has assigned a task to the Aviation Rulemaking Advisory Committee (ARAC) to recommend the requirements in part 139 that should be applicable to airports covered under any expanded legislation that would give the FAA authority to certificate airports serving airplanes with less than 30 passengers. In the meantime, § 121.590 is adopted as proposed to allow affected commuters to use noncertificated airports. In making its recommendations ARAC is to consider accepted industry practices regarding airport safety, personnel available at these airports, costs associated with meeting these requirements (e.g. capital, operating, and maintenance costs), and the types of accidents/incidents that have occurred at these airports.

In response to the comment on security programs for airports and operators, no changes to parts 107 and 108 are necessary as a result of this rule because the requirements of those parts are already tailored to the size of the airplane.

V.H. Effective Date and Compliance Schedule

The FAA proposed an effective date of 30 days and a general compliance date of 1 year after publication of the final rule. The FAA stated in Notice 95–5 that a final rule, if adopted, would be published by December 31, 1995, and that within 1 year of that date, that is, by December 31, 1996, all affected certificate holders that have air carrier certification or operating certificates issued under part 135 at the time of publication would have completed the approval process and obtained new operations specifications giving them authority to conduct domestic or flag operations under part 121.

Under the proposal, persons who do not already have air carrier certificates or operating certificates who submit applications for or obtain air carrier certificates or operating certificates after 30 days after the publication date of the final rule would be required to obtain part 121 operations specifications; however, these new entrants would meet the same requirements as the affected commuters, i.e., delayed dates for retrofit of airplanes with certain types of equipment.

Proposed § 121.2(c) and § 135.2(c) allow for regular or accelerated compliance with part 121 requirements. Proposed §§ 121.2(g) and 135.2(g) also require an affected certificate holder to submit to the FAA a transition plan for moving from part 135 to part 121.

Comments: Eleven comments were received on this issue. Several commenters express a desire for an ''incremental'' or ''phased'' compliance schedule. Two commenters are concerned that the proposed ''turnkey'' recertification event is high risk with no early rewards or benefits.

RAA suggests revising proposed §§ 121.2(c) and 135.2(c) to require compliance ''not later than'' 1 year after final rule publication rather than the proposed ''as of,'' and adding the word ''complete'' before ''14 CFR part 121 operations specifications.'' RAA also suggests adding a new paragraph to the section that would state that a certificate holder may be authorized under its transition plan to comply with portions of part 121 instead of the equivalent portions of part 135 in advance of being issued complete 14 CFR part 121 operations specifications. Accordingly RAA recommends adding to the transition plan requirements of paragraph (g) a new subparagraph to include in the transition plans provisions for interim compliance with portions of part 121 in advance of obtaining complete 14 CFR 121 operations specifications. Other commenters also request provisions for complying with portions of part 121 in advance of obtaining part 121 operations specifications.

Other commenters also state concerns about FAA's capacity to facilitate the transition process on schedule. Two commenters perceive a shortage of trained inspectors and suggest that the compliance date be extended if an adequate number of inspectors are not provided by mid year 1996. GAMA suggests a reevaluation of the implementation schedule of § 121.2(d)(1), citing a questionable number of aircraft certification service personnel to support the extensive design approval activity certain to occur. Another commenter expresses concern over the necessary type certification activity surrounding modifications and suggests that 1 year is an unrealistic compliance deadline given the current FAA Aircraft Certification Office backlog.

RAA is concerned that the population of FAA inspectors qualified to perform their duties under part 121 will not be able to respond to the new part 121 air carriers. According to RAA, FAA inspectors must be trained and qualified to help affected commuters achieve the transition. RAA recommends a ''fill in the blanks manual'' to achieve standardization among FAA regions and districts. If there is an insufficient number of qualified FAA inspectors, the 1996 compliance date should be delayed.

ASA proposes a standardized transition program including three elements: (1) a fill-in-the-blanks manual for transitioning carriers; (2) an automatic exemption and incremental approval process; and (3) time schedules from transitioning carriers submitted to FAA.

Mesa Airlines recommends pre-formal certification meetings with principal operations inspectors (POI's) at an early date to familiarize both parties with the certification process outlined in FAA Order 8400.10. According to Mesa, compliance statement development, individual operator transition plans, GOM (general operating manual) development, and formal certificate application should be scheduled for the spring of 1996 to allow adequate review by respective POI's. According to Mesa this would allow certificate holders to be running their commuter operations under part 121 rules by the summer of 1996. This in turn would allow for a start-up phase for part 121 dispatch operations and modifications to the requirements for proving runs as proposed in § 121.163 and would eliminate the necessity for formal initial operating experience (IOE).

There were several comments on specific compliance dates. ALPA is generally pleased with the compliance schedule, but states that the 4-year compliance date for the installation of pitot heat indication systems could be shortened to 2 years, given the relative ease of the modification. Fairchild Aircraft finds fault with the fact that a 2-year delay is provided for compliance with emergency exit handle illumination, but no delay is allowed for compliance with § 121.310(b)(2)(ii), which would require the replacement of exit signs on new commuter category airplanes. Mesa Airlines suggests that compliance with part 121 crew flight and duty limitations be changed to January 1, 1997.

FAA Response: The final rule has a 30-day effective date and a general compliance date of 15 months after publication of the final rule. The FAA is extending the general compliance

date to be consistent with the compliance date in the training rulemaking referenced in Section III. E, Related FAA Action. Also, the proposed delayed compliance dates for certain retrofit requirements have been modified in response to comments. The final rule also establishes delayed compliance dates for meeting the performance operating limitations of part 121 for certain airplanes. Compliance dates are provided in § 121.2. This section has been reorganized to separate compliance dates for 10–19 seat airplanes and those for 20–30 seat airplanes. Retrofit and performance requirements compliance dates are listed on Table 1 and discussed in the appropriate place in the preamble.

Because of the scope and significance of this rulemaking, the FAA has already begun planning for the implementation of the final rule. Training has been provided for inspectors who will be responsible for overseeing the transition of the affected commuters from part 135 to part 121 operations. Additional training planned for January 1996 will focus on the recertification and transition process. Extensive guidance material is being prepared to assist the inspectors during the transition process. Portions of this material will also be made available to the affected commuters.

The FAA agrees with Mesa Airlines that meetings between POI's and affected commuters would help facilitate the preparation of the transition plan, which is due 90 days from today, and the planning necessary to ensure that normal operations can continue during the transition phase. The FAA believes that the training given to its inspectors, the guidance material being prepared, and a cooperative working relationship between the affected commuters and the FAA will ensure a smooth transition to part 121 operations.

The transition plan must include the certificate holder's proposed calendar of events that shows how and when it plans to make changes in its operations to meet the requirements of part 121. The transition plan should also show detailed plans for accomplishing activities and necessary retrofits for requirements with delayed compliance dates. The POI and the certificate holder will schedule the inspections necessary to show compliance with part 121 requirements. When the inspections are complete and the FAA has determined that the certificate holder can comply with part 121, the FAA will issue new operations specifications. Until the new operations specifications are issued, the existing operations specifications remain in effect. In any case the existing operations specifications expire on: (1) The date the new operations specifications are issued; or (2) 15 months from this date of publication, whichever is earlier. Affected certificate holders who want to comply with certain part 121 requirements in advance of being issued complete 14 CFR part 121 operations specifications could include in their transition plan a phased schedule including advance compliance for certain part 121 requirements, subject to their POI's approval.

Table 1—Summary of Modifications shows the compliance dates for certain retrofit and performance requirements for affected commuters. Many of these are required by the end of the basic 15-month compliance period. Affected commuters should be aware that by the specified date they must comply with all part 121 requirements, not just the ones listed on Table 1. Although the table includes additional items that were not listed in the table in Notice 95–5, no new requirements are involved. Not all requirements are in the table. The purpose of the table is to show the compliance dates for certain equipment and performance requirements that necessitate advance planning for purchasing and installation. Many of the delayed requirements apply to airplanes in the current fleet, while others apply only to newly manufactured airplanes.

It should also be noted that § 121.2(h) requires a certificate holder to comply with corresponding part 135 requirements, as applicable, in the interval between the effective date of this rule and when the certificate holder is in compliance with the part 121 requirements. In addition, the intent of § 121.2(h) is also included in specific sections that have delayed compliance dates.

This table does not apply to certificate holders currently operating under part 121. The passenger seating configuration numbers provided in the chart do not mean that the requirement applies only to that size airplane but rather that the requirement is new for that size airplane.

TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS

Effective date of required upgrade is as stated, measured from the rule publication date	Upgrade will apply to all airplanes including newly manufactured airplanes		Upgrade will apply to all newly manufactured airplanes
Issue/requirement	Within 15 months	Within years (#)	After years (#)
1. Passenger Seat Cushion Flammability, 10–19 Pax §§ 121.2, 121.312(c)		15	
2. Lavatory Fire Protection, 10–30 Pax §§ 121.2, 121.308		2	
3. Exterior Emergency Exit Markings, 10–19 Pax § 121.310(g)	Yes.		
4. Pitot Heat Indication System, 10–19 Pax §§ 121.2, 121.342		4	
5. Landing Gear Aural Warning, 10–19 Pax §§ 121.2, 121.289		2	
6. Takeoff Warning System, 10–19 Pax §§ 121.2, 121.293			4.
7. Emergency Exit Handle Illumination, 10–19 Pax §§ 121.2, 121.310(e)(2)		2	
8. First Aid Kits, 10–19 Pax § 121.309(d)(1)(i)	Yes.		
9. Emergency Medical Kits, 20–30 Pax § 121.309(d)(1)(ii)	Yes.		
10. Wing Ice Light, 10–19 Pax § 121.341(b)	Yes.		
11. Fasten Seat Belt Light and Placards, 10–19 Pax §§ 121.2, 121.317	Yes [1]		21.
12. Third Attitude Indicator, 10–30 Pax:.			
Turbojet	Yes [2].		
Turboprop §§ 121.2, 121.305(j)		152	15 months.[2]
13. Airborne Weather Radar, 10–19 Pax § 121.357	Yes.		
14. Protective Breathing Equipment, 10–30 Pax.			
§ 121.2		2	

TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS—Continued

Effective date of required upgrade is as stated, measured from the rule publication date	Upgrade will apply to all airplanes including newly manufactured airplanes		Upgrade will apply to all newly manufactured airplanes
Issue/requirement	Within 15 months	Within years (#)	After years (#)
§121.337(b)(8)—Smoke and fume protection			
§121.337(b)(9)—Fire fighting (20–30 only)			
15. Safety Belts and Shoulder Harnesses, Single point inertial harness, 10–19 Pax §§121.2, 121.311(f).	.....	.....	15 months.
16. Cabin Ozone Concentration, 10–30 Pax §121.578	Yes.		
17. Retention of Galley Equipment, 10–30 Pax §§121.576, 121.577	Yes.		
18. Ditching approval, 10–30 Pax §§121.2, 121.161(b)	Yes[3]	153	
19. Flotation means, 10–30 Pax §§121.2, 121.340	.....	2	
20. Door Key and Locking Door, 20–30 Pax §121.313(f) & (g)	Yes.		
21. Portable O2, 20–30 Pax §121.327–121.335	Yes.		
22. Additional life rafts, 10–30 Pax §121.339	Yes.		
23. First Aid Oxygen, 20–30 Pax §121.333(e)(3)	Yes.		
24. Enroute radio communications, 10–30 Pax §121.99	Yes.		
25. Latex gloves, 10–30 Pax §121.309(d)(2)	Yes.		
26. Passenger information cards, 20–30 Pax §121.571(b)	Yes.		
27. Flashlights-additional for flight attendant and pilot, 10–30 Pax §121.549(b)	Yes.		
28. Flashlight holder for flight attendant, 20–30 Pax §121.310(l)	Yes.		
29. DME, 10–30 Pax §121.349(c)	Yes.		
30. Single engine cruise performance data, 10–30 Pax (required for determining alternates) §121.617.	Yes.		
31. Performance, Obstruction Clearance, and Accelerate-stop Requirements, 10–19 Pax §§121.2, 121.157, 121.173(b), 121.189(c).	Yes.[4]	154	

[1] In-service airplanes must comply within 15 months. They may use lights or placards. Newly manufactured airplanes must comply with seat belt sign requirements of §121.317(a) within 2 years.
[2] Turbojet airplanes must comply within 15 months. Newly manufactured turboprop airplanes must comply within 15 months. In-service 10–30 pax turboprop airplanes must comply within 15 years.
[3] Transport category must comply within 15 months. Nontransport category can operate for 15 years without ditching approval.
[4] Commuter category airplanes must comply within 15 months. SFAR 41 and predecessor category airplanes must comply within 15 years.

VI. Discussion of Specific Proposals

In this section specific proposals for part 121 and part 119 are summarized, comments received are discussed, and the FAA's response to those comments is given. In Section VII comments received on the costs and benefits of the proposed rule are addressed. The part 121 discussion, which applies to the affected commuters, appears first (Section VI.A). Table 2 provides a listing of comparable sections in part 135 for each specific requirement discussed in this portion of the preamble. This is followed by a discussion of part 119 issues, which apply to all certificate holders under part 121 and part 135 (Section VI.B).

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
Subparts E and F—Approval of Routes: Domestic, Flag, and Supplemental Operations.	135.213	121.97, 121.99, 121.101, 121.107.
Subpart G—Manual Requirements	135.21, .23	121.133, .135, 121.137.
—Contents and personnel	.....	121.141.
—Airplane flight manual		
Subpart I—Airplane Performance Operating Limitations	135.365–.387	121.175–.197.
Subpart J—Special Airworthiness Requirements	.....	121.217.
—Internal doors	135.87	121.285.
—Cargo carried in the passenger compartment	135 App. A	121.289.
—Landing gear aural warning device	.....	121.291.
—Emergency evacuation and ditching demonstration.		
—New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes.	.....	121.293(a) (new).
—Ditching emergency exits	.....	121.293(b) (new).
—Takeoff warning system		
Subpart K—Instrument and Equipment Requirements:		
—Third attitude indicator	135.149	121.305(j).
—Lavatory fire protection	135.163 (a), (h)	
—Emergency equipment inspection	.....	121.308.
—Hand-held fire extinguishers	135.177(b)	121.309(b).
—First aid kits and medical kits	135.155	121.309(c).

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
—Crash ax	135.177(a)(1)	121.309(d).
—Emergency evacuation lighting and marking requirements	135.177(a)(2), 135.178(c)–(h).	121.309(e), 121.310(c)–(h).
—Seatbacks		
—Seatbelt and shoulder harnesses on the flight deck	135.117	121.311(e), 121.311(f).
—Interior materials and passenger seat cushion flammability	135.169(a)	121.312(b).
—Miscellaneous equipment		121.313 (c), (f), (g).
—Cockpit and door keys		121.313(f).
—Cargo and baggage compartments		121.587.
—Fuel tank access covers		121.314, .221.
—Passenger information		121.316.
—Instruments and equipment for operations at night	135.127	121.317, 121.323.
—Oxygen requirements		
—Portable oxygen for flight attendants	135.157	121.237–.335, 121.333(d).
—Protective breathing equipment (PBE)		121.337.
—Additional life rafts for extended underwater operations	135.167	121.339.
—Flotation devices		
—Pitot heat indication system		121.340.
—Radio equipment	135.158	121.342.
—Emergency equipment for operations over uninhabited terrain	135.177, .178	121.353.
—TCAS		
—Flight data recorders	135.180	121.356.
—Airborne weather radar	135.152 (a), (b)	121.343.
—Cockpit voice recorders	135.173, .175	121.357.
—Low-altitude windshear systems	135.151	121.359.
—Ground proximity warning system (GPWS)	135.153	
Subpart L—Maintenance, Preventive Maintenance, and Alterations:		
—Applicability	135.411(a)(2)	121.361.
—Responsibility for Airworthiness	135.413	121.363.
—Maintenance, preventive maintenance, and alteration organization	135.423, .425	121.365, .367.
—Manual requirements	135.427	121.369.
—Required inspection personnel	135.429	121.371.
—Continuing analysis and surveillance	135.431	121.373.
—Maintenance and preventive maintenance training programs	135.433	121.375.
—Maintenance and preventive maintenance personnel duty time limitations		121.377.
—Certificate requirements	135.435	121.378.
—Authority to perform and approve maintenance, preventive maintenance, and alterations.	135.437	121.379.
—Maintenance recording requirements	135.439(a)(2)	121.380(a)(2).
—Transfer of maintenance records	135.441	121.380a.
Subpart M—Airman and Crewmember Requirements:		
—Flight attendant complement	135.107	121.391.
—Flight attendants being seated during movement on the surface	135.128(a)	121.391(d).
—Flight attendants or other qualified personnel at the gate		121.391(e), 121.417, 121.393 (new).
Subparts N and O—Training Program and Crewmember Requirements		121.400–121.459.
Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag.		121.461–121.467.
Air Carriers		
Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations.	135.261–135.273	121.470–121.525.
Subpart T—Flight Operations:		
—Operational control	135.77, .79, 135.75, 135.69, .19.	121.533, .535, 121.537, 121.547, 121.551, .553.
—Admission to the flight deck		121.557, .559, 121.565 (new).
—Emergency procedures	135.117, .127	121.571(a), 121.533, .573, 121.585.
—Passenger information	135.91(d)	121.574.
—Oxygen for medical use by passengers	135.121, 135.87, .122	121.575, 121.577.
—Alcoholic beverages		121.578(b).
—Retention of items of mass	135.93	121.579.
—Cabin ozone concentration		
—Minimum altitudes for use of autopilot	135.75, 135.23(q)	121.581, 121.586.
—Forward observer's seat		
—Authority to refuse transportation	135.87, 135.229, .217	121.589, 121.590.
—Carry-on baggage		121.617(a).
—Airports		
Subpart U—Dispatching and Flight Release Rules:		
—Flight release authority		121.597.

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
—Dispatch or flight release under VFR	135.211	121.611.
—Operations in icing conditions	135.227, .341, 135.345	121.629.
—Fuel reserves	135.209, .223	121.639, .641, 121.643, .645.
Subpart V—Records and Reports	135.65(c), 135.415(a)	121.701(a), 121.703 (a), (e).
—Maintenance log: Airplane	135.417	121.705(b).
—Mechanical interruption summary report	135.439(a)(2), 135.443	121.707, 121.709.
—Alteration and repair reports		
—Airworthiness release or airplane log entry		121.711, .713, 121.715.
—Other recordkeeping requirements.		

VI.A. Part 121 Discussion

VI.A.1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers

Section 121.97 requires each domestic and flag operator to show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. The operator must also have an approved system to disseminate this information to appropriate personnel. Although part 135 has similar requirements, part 121 requires more information.

Section 121.99 requires each domestic and flag operator to have a two-way air/ground communication system between each airplane and the appropriate air traffic control facility, along the entire route. In the 48 contiguous States and the District of Columbia, the communications system between each airplane and the dispatch center must be independent of any system operated by the United States. This would be a new requirement for the affected certificate holders.

Section 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for the operation. For operations within the 48 contiguous States and the District of Columbia, these reports must be prepared by the National Weather Service. For other areas, a system must be approved by the Administrator. Section 135.213 has similar requirements, except that the pilot in command is allowed to use various other sources, including his own weather assessment, for VFR operations. This section also requires reports of adverse weather phenomena. The FAA proposed that affected certificate holders comply with part 121.

Section 121.107 requires each domestic and flag operator to have enough dispatch centers, adequate for the intended operation. This would be a new requirement for affected certificate holders, as discussed in Section V.F., Dispatch System.

Comments: ALPA comments that the upgrade to part 121 represents a major improvement over part 135. ALPA also comments that Subparts E and F should be upgraded to require that each pilot have a set of approach and navigation charts rather than having to share a set. ALPA provides supportive information, such as an NTSB recommendation (A–95–35) for a similar requirement.

Several comments were received on the enroute radio communication requirements of § 121.99. ASA and RAA question the need for airline provided enroute radio communication capability for short-haul flights and request that the requirement be reconsidered. According to these commenters, the average enroute times for affected certificate holders is less than an hour. For such short flights there is little time during the enroute portion of a flight for company communication. The cost of installing company communications would be high and safety would not be diminished without company communication since the crew can be contacted through Air Traffic Control.

AACA points out that this would be a new requirement for affected commuters. Intrastate Alaskan operations now conducted under flag operations rules will be conducted under domestic rules and would be required to comply with the independent communications systems requirements. Because of low altitudes, VFR flight operations, and the lack of Remote Communications Outlet at many locations, maintaining communications will require construction of a large communications infrastructure. When operators in Alaska use flag rules, AACA interprets § 121.99 to not require the communications system be independent of any system operated by the United States.

FAA Response: The ALPA suggestion on requiring that each pilot have a separate set of navigation and approach charts is beyond the scope of this rulemaking; however, the FAA is planning to initiate a separate rulemaking on the issue.

Section 121.99 requires each domestic and flag air carrier to have a two-way radio communication system that is independent of any system operated by the United States. FAA flight service stations and air traffic control facilities that are currently providing radio communication service for certificate holders are used for the control of aircraft and were never intended to be used by individual certificate holders to relay information that is the certificate holder's responsibility, such as scheduling changes or weather information. Hence, an additional expense would be incurred by certificate holders required to contract for communication services through commercial services. However, it is believed that most part 135 certificate holders already have facilities and communications equipment that satisfy the dispatch requirements under part 121.

The FAA believes that there is a need for a two-way air-ground radio communication system that will ensure reliable and rapid communications over the entire route between each airplane and the appropriate dispatch office and between each airplane and the appropriate air traffic control unit. The need to show that each operator has a two-way radio system is not new. However, the requirement to have an independent system is new for operations of affected commuters and intrastate Alaska and Hawaii operations previously conducted under flag operations rules. While no commenters focus on § 121.97 or § 121.117, the FAA

points out under §§ 121.97(b)(4)(i) and 121.117(b)(4)(i) affected operators will be required to comply with airport data requirements which include applicable performance requirements of Subpart I. For affected airplanes these performance requirements will be found in new appendix K to part 121 as referenced in subpart I.

VI.A.2. Subpart F—Approval of Routes: Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

This subpart is similar to subpart E except that it applies to supplemental operations and prescribes flight following requirements. Under the proposal, this subpart would apply in cases where an affected operator uses an airplane that is also used in domestic operations to conduct a nonscheduled operation. On this issue, no comments were received and the final rule is adopted as proposed.

VI.A.3. Subpart G—Manual Requirements

Manual requirements: Contents and personnel: Under subpart G of part 121 certificate holders are required to prepare and keep current a manual containing policies, procedures, applicable regulations, and other information necessary to allow crewmembers and ground personnel to conduct the operations properly (see § 121.133 and § 121.135). While the requirements of parts 121 and 135 are similar, part 121 manual requirements contain a more extensive list of manual contents (§ 121.135). Under part 121 the manual or appropriate parts must also be furnished to more personnel, such as aircraft dispatchers and flight attendants, and made available to others, such as station agents. Notice 95–5 stated that the effect of these differences between compliance with part 121 versus compliance with part 135 would be significant for commuter operators. The proposal would require developing, producing, and distributing new manuals appropriate to part 121. In addition, § 121.137 requires the air carrier to issue a manual or appropriate parts to each crewmember and requires each crewmember to keep the manual up to date and have it with him or her when performing assigned duties. Part 135 does not require that flight attendants be issued a manual; however, it does require that any person to whom a manual is issued must keep it up-to-date (see § 135.21).

Comments: Fairchild Aircraft states that § 121.137 would require at least one copy of the manual specified by § 121.133 to be carried in the airplane and that this is a reasonable proposal that they fully support. Fairchild Aircraft also states that § 121.141(b)(2) contains a reference to ''rotorcraft'' which should be deleted.

ALPA states that the key to an efficient, safe airline operation can normally be found in the manuals developed by the airline. ALPA supports the FAA in adopting all facets of Subpart G. ALPA also states that § 121.135(b)(2) should be amended by removing, ''in the case of supplemental air carriers and commercial operators,'' so that the paragraph reads: ''Duties . . . of the ground organization, and management personnel.'' According to ALPA, the requirement to include in the manual duties and responsibilities of management personnel would no longer be applicable only to supplemental and commercial operators since proposed part 119 requires management personnel for all certificate holders.

One commenter states that § 121.133 should require compliance with the certificate holder's manuals.

Metro International Airways states that the cost of new manuals would be excessive for small businesses and that an outline of procedures would be a more useful reference than a highly detailed manual.

FAA Response: All but one of the comments received regarding the manual requirements support the implementation of Subpart G of part 121. Only one comment regarding the costs associated with the manuals required by § 121.131 was received.

Additionally, the FAA has received requests from certificate holders that would like to begin the process of transition prior to implementation of the rule. This would allow those certificate holders to spread the cost of manual production and distribution over a longer period of time. The question of phased-in-implementation is not unique to this issue and is addressed elsewhere in this document.

The FAA agrees with ALPA's suggestion to revise the wording of § 121.135(b)(2). This is not a substantive change from Notice 95–5 because § 119.65(e) also requires that manuals contain the duties and responsibilities of required management personnel. The FAA also agrees with Fairchild's suggestion to delete the word ''rotorcraft'' from § 121.141(b)(2). These recommendations are appropriate. In the final rule §§ 121.135(b)(2) and 121.141(b)(2) are revised accordingly.

In response to the comment that § 121.133 should require compliance with the certificate holder's manual, the holder of an air carrier certificate with operations specifications to operate under part 121 must comply with the regulations in part 121 (and other applicable regulations). Requirements for preparing and maintaining a manual serve the purpose of supplying information to personnel. Information in the manual must be accurate and consistent with the regulations. Since the manual may also include company policy and guidance to personnel, all portions of the manual are not enforceable as regulations. The language of the manual requirements does, however, imply that the certificate holder must adhere to all of the contents of the manual and that the certificate holder's personnel must use the manual in conducting operations.

In response to the comment that the manual requirements will be a burden for small businesses and that an outline of procedures would be more helpful to personnel, small certificate holders are already meeting the manual requirements of part 135; this rulemaking requires an update of manuals and broader distribution of the manuals. An outline of procedures could be used as guidance in addition to the manuals or as part of a manual, but under current part 135 it would not suffice as meeting the manual requirements.

In the final rule § 121.133 has been revised to update the terminology.

VI.A.4. Subpart H—Airplane Requirements

For comments and FAA responses to the requirements in § 121.157, Aircraft certification and equipment requirements, see the discussion in Section V. C., Aircraft Certification.

Single-engine airplanes. Section 121.159 prohibits operation of single-engine airplanes under part 121. No change to this prohibition was proposed since the FAA does not consider single-engine airplanes acceptable to part 121 standards. Under the proposal, this section was amended to delete an obsolete reference to § 121.9. No comments were received on this issue and the final rule is adopted as proposed. For a related discussion on the operation of single-engine Otters, see ''Applicability: Alaska,'' in Section V.B.

Airplane limitations: Type of route. Section 121.161(a) requires that a two-engine or three-engine airplane except a three-engine turbine powered airplane must be within 1-hour flying time from an adequate airport at normal cruising speed with one engine inoperative, unless otherwise approved by the Administrator. Part 135 does not contain a comparable requirement; however, the FAA proposed that

affected commuters would comply with the requirements of § 121.161(a).

Section 121.161(b) contains a separate requirement that (with some exceptions for certain older airplanes) no person may operate a land plane in extended overwater operations unless it is certificated or approved as adequate for ditching. The FAA proposed that affected commuters would also comply with the requirements of § 121.161(b). In Notice 95–5, the FAA invited specific comments on the potential impact of these proposals on operations in Alaska.

Comments: Several comments were received on the § 121.161(a) requirement to be within 1 hour of an airport with one engine inoperative. One commenter suggests that § 121.161 be rewritten to reflect today's environment, since no airport in the U.S. is more than 1 hour away for these commuter airplanes. The commenter also states that the rule should specify the requirements for two-engine operations over the water.

Fairchild and AIA both state that § 121.161(a) would require single-engine cruising speed data and this data is unlikely to be included in some Airplane Flight Manuals (AFM). The commenters also state that there appears to be no safety benefit and it will be difficult to show compliance. According to these commenters, the final rule should except 10–30 passenger seat airplanes.

Phoenix Air anticipates that its operations with a Grumman G–159 Gulfstream airplane would be disrupted due to the requirements of § 121.161, since they intend to start service between Honolulu and Midway Island. There are no airports that would be within 1 hour of the intended flight path.

Jetstream concurs with the requirement that airplane routes should be within 1 hour of an adequate airport.

Three comments were received on the certification ditching requirements of § 121.161(b). Fairchild and AIA note an apparent oversight in that the FAA did not propose to exclude part 23 Normal or Commuter Category airplanes from the ditching requirements of § 121.161(b).

AACA notes that several certificate holders fly affected aircraft on extended overwater routes in Alaska. Compliance with the part 25 ditching requirements would add certification costs, impose equipment weight penalties, and reduce payloads. According to the commenter, the FAA did not calculate these costs. The commenter supplies information indicating that costs to comply with the ditching requirements of part 25 are substantial.

FAA Response: Despite the comments to the contrary, the FAA has decided to adopt its proposal to apply the route limitation requirements of § 121.161(a) to the 10- to 30-seat airplanes operated by the affected commuters. Under that section any route flown by a twin engine commuter type airplane must be flown so that it is within 1 hour of an adequate airport for landing. Part 121 and its predecessor regulations have applied route limitation requirements to airplanes operating under those requirements since 1936. While the specific details of the route limitation requirement have changed over the years, the underlying safety issue has not; the certificate holder must show, before operating affected airplanes over a route, that it can safely continue flight in an emergency situation to an airport adequate for landing. The FAA understands that some of these airplanes will require an AFM revision that will provide engine-out cruise speed data. There are routes in areas outside of the contiguous U.S. that are more than 1 hour flying time (with one engine inoperative) from an adequate airport. In accordance with § 121.161(a), the Administrator may authorize a deviation from the requirement, if the operator can show that the 1-hour flight time limit is not necessary based on the character of the terrain, the kind of operation, or the performance of the airplane. Obtaining authorization to conduct extended range operations with two-engine airplanes is dependent upon many factors. Some of these factors are a type design review of the airframe system, a review of the in-service history of the airplane propulsion system, and an assessment of the certificate holder's maintenance and inspection program capability for extended range operations. Advisory Circular 120–42 provides the guidelines for this authority. Other rules provide the requirements for extended overwater routes.

The Douglas DC–3 and Curtiss C–46 airplanes excluded from § 121.161(b) were type certificated and manufactured before the present standards of part 25 were adopted. These aircraft were excluded because of their previous operating experience which showed, in some cases through actual ditchings, that these old airplanes could ditch satisfactorily. The Convair 240, 340, and 440 and Martin 404 airplanes were also type certificated before the present standards were adopted. They were excluded because tests conducted by the National Advisory Committee for Aviation showed they would have excellent ditching characteristics. Unlike current part 25, part 23 contains no standards for ditching approval. Unlike those older airplanes excluded in § 121.161, none of the part 23 airplanes have been shown to comply with any ditching standards. Contrary to the commenter's assumption, requiring part 23 airplanes used in extended overwater operations to meet the ditching certification requirements was not an oversight. In Notice 95–5 preamble, the FAA concluded that these requirements should be applied to the operations that would be moved from part 135 to part 121.

After considering the comments, the FAA has determined that until 15 years after the date of publication of the final rule a certificate holder may operate in an extended overwater operation a nontransport category land airplane type certificated after December 31, 1964, that was not certificated for ditching under the ditching provisions of part 25 of this chapter. Section 121.161(c) has been added accordingly.

Proving tests. Section 121.163 provides proving test requirements for part 121. In addition to aircraft certification tests, an aircraft to be operated under part 121 must have at least 100 hours of proving tests for an airplane not previously proven for use in part 121 operations, and 50 hours of proving tests for an airplane previously proven for use in part 121 operations. The number of hours may be reduced by the Administrator. Section 135.145 requires 25 hours of proving tests in addition to certification tests for certificate holders that operate turbojet airplanes or airplanes for which two pilots are required for operations under VFR if that airplane or an airplane of the same make and similar design has not been previously proved in any operations under part 135. Both §§ 135.145 and 121.163 require proving tests for materially altered airplanes. However, under § 121.163, proving tests apply to each airplane to be operated under part 121. Under part 135 proving tests apply to each aircraft or to aircraft of similar make and design. Part 121 also describes three types of proving tests. Under part 121, the initial operator of a type of airplane must conduct at least 100 hours of proving tests, acceptable to the FAA, which can be reduced in appropriate circumstances. Moreover, for each kind of operation (e.g., domestic, flag, supplemental) that a certificate holder conducts, 50 hours of proving tests are required, which are reducible in appropriate circumstances.

Comments: Six substantive comments were received. Comair and RAA concur with the requirement for an air carrier

to demonstrate its ability to perform in accordance with part 121 and company procedures. However, Comair proposes that carriers currently conducting operations under part 121 and part 135 (split certificates) should not be required to conduct this demonstration. Carriers conducting part 121 and part 135 operations have previously proven their ability to conduct part 121 operations. If the requirement for dispatching is adopted, flight crewmembers will demonstrate their proficiency with the new system during their required line check.

RAA comments that proving flight hours should be reduced based on ''experience and performance'' factors. To facilitate a reduction in flight hours, the FAA should identify those specific procedures for which non-revenue proving flights would be required and specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures.

ASA believes that the requirement for proving flights will result in an increase in both initial and recurring costs. United Express joins ASA in proposing that FAA recognize the experience level of air carriers operating under part 135 and permit proving tests to be conducted during revenue service. United Express further proposes that the required number of hours be reduced for those carriers currently using a dispatch system.

Big Sky Airlines recommends a waiver of the requirement for a proving test for airlines that have a good safety record and proven experience. The commenter justifies its recommendation on the basis of excessive and unnecessary burden and cost.

Commuter Air Technology requests clarification concerning which modifications to specific aircraft would require 100-hour initial proving tests.

FAA Response: Section 121.163 has two main parts. Paragraph (a) prohibits a carrier from operating an aircraft type in scheduled service that has never been used in scheduled service until it has flown 100 hours of proving flights. These hours are in addition to any aircraft certification tests. For the purposes of this rulemaking, the FAA recognizes that the current commuter fleet has established a sufficient history of operations and does not intend to require the 100 hours of proving flights for aircraft currently being operated by those carriers affected by this rulemaking. Paragraph (b) of § 121.163 requires 50 hours of tests for the carrier to show that not only can it operate and maintain the aircraft, but also that it has the ability to conduct a particular kind of operation (i.e., domestic or flag) in compliance with the applicable regulatory standards.

The FAA agrees that carriers currently conducting operations under both part 121 and part 135 (split certificates) will be eligible to apply for a reduction of the number of hours required to conduct the demonstration required by paragraph (b). In regard to the comment that flight crewmembers that are new to part 121 operations will demonstrate their proficiency during accomplishment of a line check, the FAA does not agree that this could take the place of proving flights. The primary focus of proving flights is not simply to test the proficiency of flight crewmembers but to test the company's operational control procedures for the airplanes that will be operated in accordance with the requirements for a new kind of operation, i.e., flag or domestic. The FAA supports the idea that proving flight hours should be reduced based on ''experience and performance'' factors. The FAA has begun to identify those specific procedures for which proving flights would be required and to specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures. This guidance to FAA inspectors will be provided in a revision to Order 8400.10.

The FAA agrees that proving tests will require an expenditure of the carrier's financial resources. Safety requires these proving tests to determine that an operator can conduct operations under part 121 safely, using new procedures, dispatches, etc. The FAA recognizes the experience level of air carriers operating under part 135 and, based on the carrier's experience with part 121, will provide FSDO inspectors with written guidance on approving deviations from the requirements of § 121.163. The FAA believes that proving tests are an essential part of the certification process and also provide the carrier with an opportunity to do some ''dry-runs'' before beginning revenue service under a completely new set of regulatory standards. The FAA's intent is to provide inspectors with the authority to provide deviations from the proving test requirements. FAA Headquarters will review each proposed reduction of proving test hours and will concur or not concur with the proposed number of hours for each affected commuter.

In response to Commuter Air Technology's request for clarification concerning which modifications to specific aircraft would require 100 hour initial proving tests, § 121.163(d) contains criteria for when a type of aircraft is considered to be materially altered in design.

VI.A.5. Subpart I—Airplane Performance Operating Limitations.

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes and §§ 121.189 through 121.197 apply to turbine engine-powered transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

In part 121 the term ''nontransport category airplane'' is currently used to refer to older airplanes like the Curtis C–46, that were type certificated before the transport category was established, i.e., the early 1940's. However, many airplanes type certificated over the last 20 years used by affected commuters (e.g., commuter category and SFAR 41 airplanes and predecessor categories), are also nontransport category. Therefore, the FAA proposed to delete the term ''transport category'' throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

Comments: ALPA states that all requirements of part 121 subpart I should be complied with by all turbo-propeller airplanes with a passenger capacity of 10 or more.

AACA concurs that airplanes with 10 to 19 seats should be required to comply with all of the proposed modifications (in Table 1 of Notice 95–5) except for part 121 performance and obstruction clearance and floor proximity lighting. (See later discussion of floor proximity lighting.)

Jetstream, RAA and ALPA support the overall proposals concerning the higher level of performance requirements. However, they join with Commuter Air Technology, Raytheon and an individual to point out that additional performance data/charts would need to be developed (for example: accelerate-stop and obstacle clearance data). RAA also recommends a 2-year time frame instead of the proposed 1-year performance compliance date.

Jetstream states that Notice 95–5, in conjunction with other proposed rules and changes, will introduce more weight to the aircraft. In addition to this, AC 120–27D, Aircraft Weight and Balance Control, will increase standard average passenger weights used for calculations. The combined effect is that these aircraft will no longer be allowed to carry 19 passengers due to reduced payload capacity. According to the commenter, the combined effect of the weight changes is about two passengers.

Jetstream and Raytheon comment that current FAA policy should be revised to allow manufacturers to increase the maximum takeoff weights for aircraft certificated under SFAR 41. They justify their comments by stating that the increase in maximum takeoff weight will provide a mitigation of the additional equipment weights incurred under this rulemaking.

One commenter states that better weight and balance control by the FAA is necessary because many operators are flying over maximum weight.

Fairchild, Jetstream, and AIA propose that the FAA incorporate the language of § 135.181(a)(2) into § 121.191, which would provide, in their view, a more conservative approach to one engine inoperative enroute operations. Jetstream also notes that there is no requirement for commuter airplanes to show Net En Route Flight Path data in their AFM's.

One commenter suggests that part 121 be written to specify the exact performance requirements for nontransport category airplanes to be included in their performance manuals so there would be no confusion with other FAA performance requirements.

Fairchild and AIA suggest deleting all references to ''transport category'' in §§ 121.189 through 121.197.

FAA Response: Section 121.135(b) requires that the manual contain methods and procedures for maintaining the aircraft weight and center of gravity within approved limits. Approved weight and balance control procedures are the only means for an operator/applicant to authorize the use of other than known weights for crew, passengers, baggage, or cargo. The weight and balance control program, including loading schedules and charts, are approved on operations specifications by the FAA. This program must be included in the operator/applicant's policies and procedures manual.

Section 121.189(c)(1) states, for turbine engine powered takeoff limitations, that ''(c) No person operating a turbine engine powered category airplane certificated after August 29, 1959, may take off that airplane at a weight greater than that listed in the Airplane Flight Manual (AFM) at which compliance with the following may be shown: (1) The accelerate-stop distance must not exceed the length of the runway plus the length of any stopway.''

The FAA agrees that new or additional performance data would need to be developed for certain airplanes, and that this data would need to be acceptable to the FAA Aircraft Certification Office and incorporated into the Airplane Flight Manual (AFM). At the present time, some AFM's (for Beech 99, certain Metroliners, and the Twin Otter) do not have accelerate-stop distance data, only accelerate-slow data. In order for the airplane operator to comply with § 121.189(c)(1), the operators would have to request an AFM supplement from the airplane manufacturers showing this required data. The FAA has not required the manufacturers to develop this data. If they have developed the data, it would still have to be certificated by the FAA as a revision to the AFM. If the manufacturer does not have accelerate-stop data, it will have to flight test, simulate, or analytically prove accelerate-stop distance data to the FAA. This process could be expensive to the operators who would pay for the manufacturer's support.

This rulemaking does not require the affected airplanes that are currently in service or airplanes that will be manufactured under an existing type certificate to meet the engine-out climb gradient performance required by part 25. These airplanes will, however, be required to meet the obstacle clearance limitations of § 121.189(d)(2).

Section 121.189(d)(2) states for turbine engine powered takeoff limitations, that ''(d) No person operating a turbine engine powered category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual—(2) In the case of an airplane certificated after September 30, 1958, that allows a net takeoff flight path that clears all obstacles either by a height of at least 35 feet vertically, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries.'' AFM's for some older airplanes with seating capacity of 10-to-19 passengers do not have data to show the required climb gradient or the certification basis to clear obstacles after takeoff with an engine-out at a specified weight. As one commenter suggests, additional certification requirements would have to be identified in part 121 or in a new Appendix to 121 for nontransport category airplanes, except for the commuter category or SFAR 41, ICAO Annex 8 airplanes, before these airplanes could comply with § 121.189(d)(2) requirements.

As with accelerate-stop data, the FAA agrees that new or additional performance obstacle clearance data for certain airplanes would need to be developed, and that this data would need to be approved by an FAA Aircraft Certification Office and incorporated into the Aircraft Flight Manual. Raytheon estimates that to provide obstacle clearance data, testing would have to be done on all Beech 99 models and the price per each airplane for the new performance data would be $63,000 ($53,000 for the Beech 1300). This cost must be incurred by the manufacturer and then passed on to all the operators.

The FAA recognizes the significant problems in developing the necessary performance data for airplanes type certificated under a wide range of standards over the past 30 years, including part 23 (or its predecessor, part 3 of the Civil Air Regulations) normal category, plus additional standards in the form of special conditions, SFAR 23, SFAR 41C, or part 135, appendix A, or part 23 commuter category. Development of the additional performance data for airplanes certificated under older standards may be developed by conducting actual flight tests, data analysis, or any other methods acceptable to the Aircraft Certification Office. The FAA believes that the performance requirements of § 121.189(d)(2), obstacle clearance with an engine-out after takeoff, contribute to an increased level of passenger and crew safety.

The FAA also understands that the requirements for accelerate-stop and obstruction clearance may, in fact, remove certain airplanes from service in part 121. It may also affect the operational capability of some operators, depending on the location and height of obstacles, and may terminate air carrier service to some communities if airplanes are removed from service.

Because of the difficulty that affected commuters would face in meeting the part 121 performance operating limitations with their existing fleet, the FAA has decided to provide delayed compliance for these requirements. Subpart I has been amended to state different requirements for aircraft used by affected commuters that were certificated under different certification standards, as follows:

1. Airplanes certificated under commuter category can meet all of the

airplane performance requirements of part 121 within 15 months of the publication of the final rule.

2. Airplanes certificated under SFAR 41 or earlier certification standards will be allowed to continue to comply with the part 135 Subpart I and other airplane performance operating limitations requirements for 15 years. The FAA anticipates that some of the SFAR 41 airplanes will be able to meet the part 121 requirements within the 15-year period so they have the choice of either continuing to operate under the performance requirements of part 135 for the 15-year compliance period or complying with the performance requirements of part 121 during the 15-year compliance period. Some of the airplanes certificated under earlier certification standards, such as under part 135, Appendix A, part 23, with special conditions, and SFAR's 23 and 41C, will probably never be able to meet the part 121 standards. For affected commuters operating these airplanes, the 15-year period allows the operators sufficient time to plan for and obtain replacement airplanes or to modify them.

Although the FAA encourages affected commuters to comply with the performance operating requirements earlier than 15 years after publication of the final rule, it is allowing that length of time to ensure that there will be an adequate supply of replacement airplanes available for purchase. The current rate of production of new commuter category airplanes is approximately 30 per year. But most importantly, if the FAA were to impose a shorter compliance period and affected commuters were not able to obtain new airplanes from manufacturers, they might replace their equipment with airplanes configured for fewer than 10 passengers. This airplane group is not covered by this rulemaking and has a higher accident rate than the 10–19 passenger airplanes. Therefore, an unintended effect of this rule could be an increase in the accident rate.

In response to Jet Stream's comment, current FAA policy prohibits revisions to airplanes certificated under SFAR 41 that would increase the maximum weight or the number of passengers. This SFAR was terminated on September 13, 1983.

While the FAA understands that some of the older airplanes (i.e., normal category predecessors of commuter category airplanes) may not be able to meet certain performance requirements, the FAA has determined that some performance requirements, such as the maintaining of an altitude with an engine-out, are important safety enhancements that provide for a higher level of safety. This level of safety required in part 121 should be available to all passengers flown on carriers operating under part 121.

Section 121.191 requires that the AFM show a one-engine inoperative net en route flight path which would provide a positive slope at an altitude of at least 1,000 feet above the terrain (2,000 feet in mountainous terrain) within 5 statute miles of the intended track. Section 121.191 also provides for a net flight path that would allow continued flight from the cruising altitude to an airport clearing all terrain and obstructions. Section 135.181(a)(2) requires airplanes to maintain a 50 feet per minute rate of climb when operating at the MEAs or 5,000 feet MSL whichever is higher. It does not provide for the continuation of the flight below the MEA.

Section 121.191 has continuously provided for safe engine out en route operations while allowing some flexibility. The flexibility allows the certificate holder to calculate maximum weights for maintaining a constant engine out altitude, a continuous flight path drift down to an airport when an altitude cannot be maintained, and provides off airways direct routing engine out performance requirements. The FAA understands that net en route flight path data must be provided by the manufacturer; however, the FAA believes that part 121 air carriers deserve the additional flexibility of § 121.191 and that commuters adopting the § 121.191 requirements may gain a flexible benefit with a continued higher level of safety.

In response to comments, the FAA points out that Notice 95–5 proposed to remove the words ''transport category'' wherever they appear in subpart I.

In reviewing part 121 to resolve comments, the FAA noted that several formulas are printed incorrectly. In the rate of climb formula for reciprocating engine powered transport category airplanes certificated under parts other than part 4a of the Civil Air Regulations (CAR), the parentheses are misplaced. This formula has been printed correctly in the corresponding part 135 section of § 135.371 (a) and (c)(1). Also, in the rate-of-climb formula for transport category airplanes certificated under CAR 4a [§ 121.181 (a) and (c)(1) and § 121.183 (a)(2) and (c)(1)] it is not clear as printed that the subscript $_{So}$ is to be squared. Appropriate corrections are made to both formulas.

VI.A.6 Subpart J—Special Airworthiness Requirements

Internal doors. Section 121.217 prescribes that in any case where internal doors are equipped with louvers or other ventilating means, there must be a means convenient to the crew for closing the flow of air through the door when necessary.

Comments: Raytheon Aircraft states that a new toilet installation for the 1900D has internal partitions with permanently open louvers. Compliance with § 121.217 would require Raytheon to redesign the partition louvers so a crewmember could leave his or her station to close the louvers when necessary or design the louvers for remote control closure.

FAA Response: Contrary to the commenter's assumption, the lavatory partition louvers in the commenter's airplanes would not have to be redesigned. As stated in § 121.213 (a) and (b), § 121.217 applies only to airplanes type certificated under Aero Bulletin 7A or part 04 of the Civil Air Regulations.

Cargo carried in the passenger compartment. Section 121.285 requires that cargo carried in passenger compartments must be stowed in a fully enclosed bin or carried aft of a bulkhead or divider and properly restrained. Section 135.87 allows certificate holders to carry cargo in an approved cargo compartment instead of a fully enclosed bin and to carry restrained cargo anywhere in the passenger compartment if it is restrained by a net that meets the requirements of § 23.787(e). The FAA proposed to amend § 121.285 to add an exception for commuter category (and predecessor) airplanes that would have the effect of allowing cargo to be carried in the passenger compartment as it is today under part 135.

Comments: AACA, an association of Alaskan air carriers, fully supports the proposal.

FAA Response: The final rule includes provisions from § 135.87 that have been moved into § 121.285 for nontransport category airplanes type certificated after December 31, 1964.

Landing gear aural warning device. Section 121.289 contains a requirement for a landing gear aural warning device for large airplanes. At present this section applies to any airplane with a maximum certificated takeoff weight of more than 12,500 pounds. Appendix A of part 135 requires a landing gear warning device for airplanes having retractable landing gear and wing flaps, but the device need not be aural. The FAA considers that the cost of replacing a warning light with a warning sound

would be minimal. Therefore, this section would apply to any airplane that presently operates under part 135 and that would be required by this final rule to operate under part 121. To allow adequate time for airplanes without aural warning devices to be retrofitted, the FAA proposed a compliance date of 2 years after the publication date of the final rule.

Comments: Raytheon comments that their models all provide aural landing gear warning.

AACA notes that the FAA did not prepare a cost analysis for this proposal, other than to show that the cost would be ''minimal.'' AACA shows that various manufacturers' comments on similar proposals have identified substantial administrative, engineering, installation, and ongoing maintenance cost. However, AACA also notes that, in this case, Fairchild Aircraft believes that the landing gear aural warning can be installed without undue cost or difficulty.

AACA also states that once an item is installed, there are many other things that must be done that involve cost. Cost items identified are: revisions of the certificate holder's training program, normal and emergency procedures, maintenance MEL's and other items need to be amended to reflect the change from a visible lighted warning device to an aural device. According to AACA, compliance costs add up incrementally to substantial cumulative cost and that the FAA fails to account for.

FAA Response: Even though part 23 requires an ''aural or equally effective device,'' the FAA is not aware of airplanes where the ''equally effective device'' was accepted as the only warning for the landing gear warning. The reason for not accepting such devices includes the consideration of pilot's work load during the landing phase of flight and the need for the warning to attract pilot attention under such conditions. No proposed lighted device, by itself, has been found acceptable to provide the needed warning for this flight condition. Therefore, the FAA is amending § 121.289 as proposed to require installation of a landing gear aural warning device within 2 years of the publication of this final rule. However, the FAA believes that all affected airplanes already have an aural warning system.

Emergency evacuation and ditching demonstrations. Section 121.291 contains requirements for conducting demonstrations of airplane evacuation and ditching procedures. The FAA requires these demonstrations upon introduction of a new type and model of airplane into passenger-carrying operations. For airplanes with a seating capacity of more than 44 passengers, an actual evacuation demonstration must show that the full capacity of the airplane and the crewmembers can be evacuated within 90 seconds. Also, for airplanes with more than 44 passenger seats a partial demonstration is required under one of the circumstances described in § 121.291(b). Demonstrations have not been required for airplanes with fewer than 44 passenger seats.

Under § 121.291(d) any certificate holder operating or proposing to operate one or more landplanes of any size in extended overwater operations must conduct a simulated ditching in accordance with Appendix D to part 121. The purpose of the ditching demonstration is to show that the certificate holder's ditching training and procedures for a new type and model of airplane are satisfactory. The simulated ditching does not specifically require the use of flight attendants; the FAA proposed to apply this rule to any affected commuter operator who conducts extended overwater operations, whether or not flight attendants are used in the operation. The FAA proposed to apply this provision to the affected commuter operators only when a new type and model of airplane is introduced into the certificate holder's operations after the effective date of the final rule. This requirement does not apply to the current fleet.

The FAA proposed to amend § 121.291(b) to clarify that the partial demonstration procedures apply only to airplanes with more than 44 passenger seats.

Comments: With respect to partial evacuation, one commenter states that the proposed rule would reduce the safety requirements for commuters because the evacuation procedures under part 121 do not apply to airplanes with less than 44 seats and that § 23.803 requires a demonstration for commuter category airplanes. One commenter states that § 121.291(b) does not indicate if the requirement applies to aircraft with more than 44 seats or all aircraft.

Two commenters recommend clarifying the rule language for the ditching demonstration in § 121.291(d) to make the FAA's intent clear. The commenters say that the current language does not properly communicate the fact that a ditching demonstration would be required only if an airplane is a new make/model for a particular certificate holder's fleet.

FAA Response: Parts 25 and 121 currently require emergency evacuation demonstrations for transport category airplanes with more than 44 passenger seats. These demonstrations are required in addition to specific detail design requirements, e.g. aisle width, exit size, exit slides, etc., and are conducted to confirm the overall evacuation capability of the airplane. They are also conducted to show the adequacy of the operator's evacuation procedures. Considering the specific detail design requirements with which transport category airplanes must also comply, the FAA has not found it necessary to require such evacuation demonstrations for airplanes having 44 or fewer passenger seats. Since part 135 does not pertain to operations with airplanes having more than 44 passenger seats, there has been no need to require an emergency evacuation demonstration in that part. Part 23, on the other hand, does not contain the same specific detail design requirements for commuter or predecessor normal category airplanes. Therefore, an evacuation demonstration is required for type certification of those airplanes in lieu of the specific detail design requirements that transport category airplanes must meet. There will be no reduction in safety because transport category airplanes will still be required to comply with the same specific detail design requirements and the part 23 requirement for an evacuation demonstration will remain unchanged. As proposed, § 121.291(b) is amended to make clear that it, as well as § 121.291(a), only applies to airplanes with more than 44 passenger seats.

The FAA agrees that the language in § 121.291(d) for the ditching requirement does not clearly state that it applies to the affected commuters only if an airplane is a new type and model introduced after they began operations under part 121. Therefore, clarifying language is added to § 121.291(d).

New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes:

• *Ditching emergency exits.* Section 25.807(e) contains requirements for ditching emergency exits in transport category airplanes. The ditching exits for transport category airplanes with 10 or more passenger seats must meet at least the dimensions of a Type III passenger emergency exit (20 inches wide by 36 inches high). It should be noted that transport category airplanes are required to have ditching exits meeting those criteria regardless of whether the airplane is approved for

ditching and used in extended overwater operations. If ditching approval is requested by the applicant, it also must be shown that the required life rafts can be launched successfully through the ditching emergency exits.

Part 23, as recently amended by Amendment 23–46 (59 FR 25772; May 17, 1994), now contains requirements for ditching exits; however, all of the normal or commuter category airplanes currently in service were type certificated before that amendment became effective. The FAA proposed to amend part 121 (proposed new § 121.293(a)) to require ditching exits for nontransport category airplanes type certificated after December 31, 1964. Unlike those required for transport category airplanes, the ditching exits would only have to be as large as those currently required by § 23.807(b) (19 inch by 26 inch ellipses). The FAA proposed that compliance would be required 2 years after the publication date of the final rule. The proposed requirement would not entail adding new exits. The overwing exits of most airplanes type certificated under part 23 would probably qualify as ditching exits. Part 25 airplanes intended for non-part 121 transportation sometimes comply by providing a sheet metal dam that can be installed in the passenger entry doorway. If it is necessary to consider a floor-level exit as a ditching exit in a nontransport category airplane, a similar sheet metal dam could be provided.

Comments: Commuter Air Technology, a modifier of business airplanes for commuter airline service, states that its product has overwing exits that would be usable anytime the airplane was floating. The commenter questions whether it would be necessary to conduct a $5,000 type certification effort to qualify those exits as ditching emergency exits. NATA, an association representing certificate holders of 10- to 19-passenger-seat airplanes, recommends rescinding the proposal and asserts that the cost of compliance would be extremely high. The commenter offers no specific details concerning costs, but does note that de Havilland DHC–6 Twin Otters have experienced only three ditchings in 17 million flight hours.

FAA Response: The comments received have some validity. The majority of the current commuter fleet, at least those for which ditching exits were not substantiated for certification, includes such airplanes as the Beechcraft 99 and 1900 and Fairchild airplanes with low wings and overwing exits. It is likely that these exits would qualify as ditching emergency exits. However, they would have to be tested. That would also be true of all other low-wing part 23 normal or commuter category airplanes that would be operated under part 121.

In addition to the low-wing models, there are also three high-wing normal or commuter category airplane models. These are de Havilland DHC–6, Twin Otters, which are by far the most numerous of the high-wing models, and the Dornier 228 and Britten Norman BN–2A Mk III Trislanders. (This, of course, refers to landplanes. Many Twin Otters operate as seaplanes on floats.) Typically, high-wing landplanes come to rest in the water on the fuselage with one wing tip in the water.

The DHC–6 Series 100 and 200 airplanes have emergency exits in the top of the fuselage forward of the wing. These exits also meet the ditching emergency exit requirements. The DHC–6 Series 300 airplanes do not have such overhead exits; instead they depend entirely on the emergency exits in the sides of the fuselage. In almost three decades of service with Twin Otters, there have been two ditchings. One involving a Series 100 airplane occurred in the Pacific Ocean during a ferry flight from Long Beach, California, to Honolulu, Hawaii. Another, involving a Series 300, occurred in the Arctic. In both instances, all occupants were evacuated safely. In the latter case, the occupants escaped through the exits on the highest side. The FAA is not aware of any ditchings of Trislanders or Dornier 228 airplanes; however, because the Dornier 228 and the Trislander are so similar in design to the DHC–6, it is likely that they would float the same way that the Series 300 airplane did, and that their exits would also meet the ditching emergency exit requirements.

Most of the part 23 commuter and predecessor normal category airplanes are low-wing airplanes with overwing exits that would comply with no further substantiation required. The vast majority of the airplanes would, therefore, not be affected by the requirement in regard to either cost or safety benefit because they already comply. In view of the successful ditchings that have occurred with high wing airplanes to date, the FAA has decided not to adopt § 121.293(a) as proposed.

• *Takeoff warning system*. Section 25.703 requires an aural warning to the flightcrew at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. Part 23 does not require a takeoff warning system (although a requirement for such a system is proposed in Notice No. 94–21, 59 FR 37620, July 22, 1994); in addition, part 23 airplanes typically do not have multiple types of devices. Accidents have occurred on transport category airplanes when the flightcrews initiated takeoffs when the airplanes were not in the proper configurations for takeoff. The FAA proposed that airplanes manufactured after a date 4 years after the publication date of the final rule would be required to have a takeoff warning system as required by § 25.703. However, a warning system is not required for any device for which it can be demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition (§ 121.293(b)).

Comments: One commenter notes that a takeoff warning would not be required under § 25.703 if it is demonstrated that a takeoff with that device in the most adverse position would not create a hazardous condition. This commenter questions how one can measure the effect of these improper settings when compounded by other unfavorable conditions, such as weight and balance mistakes, but does not express support or opposition to the proposal.

Commuter Air Technology discusses the longitudinal trim and flap systems on its airplanes. The commenter notes that the pilot can visually verify that the flaps are in correct 40° takeoff setting from the cockpit. The commenter also states that the longitudinal trim is manual and has center marking visible from both the pilot and co-pilot positions. The commenter's position is that the additional cost of such a system is not warranted.

FAA Response: The first commenter correctly notes that a takeoff warning system is not required for any devices if it is demonstrated that takeoffs with that device in the most adverse position would not cause an unsafe condition. While the FAA agrees that with some airplanes it is possible to verify visually flap positions and manual trims and that there is a cost to install warnings, the FAA has determined that for safety reasons, an aural warning is needed under the conditions described.

In considering these comments, the FAA notes that all of the in-service airplanes have demonstrated, by their service histories, that there is no device position that would cause an unsafe condition and therefore that there would be no need for installation of additional takeoff warning devices. While proposed § 121.293(b) (now § 121.293) does not apply to any in-service airplanes affected by this rule, the requirement for airplanes

manufactured 4 years after the publication date of this rule is retained in the final rule to ensure that future airplanes are covered.

VI.A.7. Subpart K—Instrument and Equipment Requirements.

Instrument and equipment requirements are contained in part 121, subpart K, and part 135, subpart C. The requirements are in addition to the airplane and equipment requirements of part 91. The discussion below emphasizes all new or revised equipment requirements except for major equipment such as FDR's and airborne weather radar, which are previously discussed in the ''Major Issues'' section of this document.

Notice 95–5 proposed to require that commuter operators comply with part 121 airplane and equipment requirements except in areas that were specifically discussed.

Sections 121.303, 121.305, and 121.307 require certain airplane instruments and equipment. Some of the part 121 equipment is required under part 135 only for IFR, VFR over-the-top, and VFR night operations. Most of the airplanes used by affected commuters already have these instruments as well as equipment required under part 135 (§§ 135.143 and 135.149). Under the proposal this equipment in these part 121 sections would be required for all part 121 operations.

Third Attitude Indicators. Section 121.305(j) currently requires a third attitude indicator on large turbojet-powered and large turboprop powered airplanes. Notice 95–5 proposed to apply this requirement to airplanes that would be operating under part 121 as a result of this rulemaking.

Comments: Most of the commenters on this issue oppose the requirement, primarily because of the cost.

According to RAA, part 121 does not include an equivalent to § 135.163(h), which requires dual attitude indicators which are powered by two different and independent power sources for nontransport category airplanes. RAA recommends requiring the third attitude indicator only for new production large airplanes, deleting the proposed retrofit requirement, and incorporating § 135.163(h) into part 121 for nontransport category airplanes. RAA also recommends considering an equivalent means of compliance for large nontransport category airplanes, such as ''Situation Awareness for Safety'' devices.

Raytheon Aircraft and Mesa state that the requirement is excessive for airplanes that already have two attitude indicators, each supplied by a separate source of power. Raytheon and Big Sky are concerned that the requirement might necessitate a redesign of the instrument panel.

Twin Otter International believes the requirement would be extremely costly with little safety benefit. According to Twin Otter, even if the attitude indicator were lost, the airplane would have adequate performance and information to be operated without a third attitude indicator.

Commuter Air Technology concurs with the proposal for all aircraft operated under part 121 and points out that § 135.149 currently requires a third indicator only for turbojet aircraft.

United Express states that the FAA supporting data for a third (independently powered) attitude gyro is based on turbojet accident/incident research and not on turbopropeller accident/incident data. According to the commenter, until the FAA can substantiate that this will prevent accident recurrence in turbopropeller aircraft, it should not be required. The commenter states that some aircraft, such as the commenter's fleet of Jetstream turboprops, have a third attitude gyro powered by the aircraft battery system. No information has been provided, that the commenter is aware of, suggesting that an independent power source will improve safety or accident statistics in turbopropeller aircraft.

FAA Response: Section 121.305(j) currently requires a third attitude indicator on large turbojet-powered and large turboprop-powered airplanes. Part 135 requires a third attitude indicator only for turbojet powered airplanes.

The FAA's intent as stated in Notice 95–5 was to require all affected airplanes to comply with the equipment requirements of § 121.305 including the requirement for a third attitude indicator. The notice did not contain amendatory language to § 121.305(j); however, to be consistent with the FAA's stated intent, the rule language has been developed to include the intended airplanes and to provide a compliance date.

In response to RAA's comment that part 121 does not have an equivalent to § 135.163(h), which requires two independent sources of energy, each of which is able to drive all gyroscopic instruments, such an equivalent appears in § 121.313(e).

The FAA does not agree with the commenter that a third attitude indicator is excessive for airplanes that have two attitude indicators or that there could be little safety benefit. The final rule requires a third attitude indicator in all turbojet powered airplanes and all turbopropeller powered airplanes. However, the FAA recognizes that retrofit installation of a third attitude indicator imposes a burden which may require a redesign of the instrument panel. Therefore, as with certain other requirements, the final rule provides for a 15-year compliance date for turbopropeller powered airplanes having a passenger seating configuration of 10 to 30 seats that were manufactured before 15 months after the date of publication of this final rule. In effect, this allows operators to decide whether to retrofit these airplanes or phase them out. Turbojet airplanes and newly manufactured turboprop airplanes must comply within 15 months.

Lavatory fire protection. Section 121.308 currently requires lavatory smoke detection systems, or equivalent, and automatically discharging fire extinguishers in lavatory receptacles for towels, paper, or waste for passenger-carrying transport category airplanes. The FAA proposed to apply the requirements of § 121.308 to airplanes formerly operated under part 135 that are equipped with lavatories. Section 121.308 would be amended to delete the references to transport category. The proposed compliance section, § 121.2, required that lavatory protection equipment be installed within 2 years after the publication date of the final rule.

Comments: ALPA believes that the FAA should require installation of the smoke detection system within 6 months of the effective date rather than 1 year as proposed. This commenter also believes that installation of the lavatory fire suppression system should be required in all airplanes newly manufactured within 1 year of the effective date rather than 2 years as proposed.

ASA and RAA do not object to compliance insofar as new airplanes are concerned, but do suggest that the requirement be deleted as a retrofit requirement. These two commenters state that the industry estimated cost of compliance is $2,500 per airplane while Jetstream estimates $4,000 per airplane.

Comair believes compliance would amount to $2,500 and 20 pounds per airplane. The commenter asserts that compliance is not justified for airplanes with 20 to 30 passenger seats due to the small size of the cabin, proximity of a trained flight attendant with a portable fire extinguisher, and the present smoking ban on domestic flights.

Commuter Air Technology asks whether the proposed requirement would apply to some of their products

that have a side facing toilet separated from the cabin only by a curtain.

Jetstream states that there is no evidence to support the introduction of fire suppression of toilet receptacles on commuter aircraft. According to the commenter, the lavatory receptacles are already designed to contain a fire within the compartment; and, due to the small cabin size of those airplanes, the lavatory is readily accessible to the crew if the need to suppress a fire does occur. The commenter estimates a cost of $4,000 per airplane. Nevertheless, the commenter does support requiring new aircraft to comply.

FAA Response: The FAA does not agree with the commenter's suggestion that installation of smoke detectors should be done within 6 months and fire extinguishers within 1 year of the publication of the final rule. This would not allow sufficient time for compliance.

The comments received do not contradict the FAA's understanding that few, if any, of the airplanes with 10 to 19 passenger seats are equipped with lavatories. The primary impact of the proposed requirement for lavatory smoke detection and fire extinguishment, therefore, would be on airplanes with 20 to 30 passenger seats presently operated under part 135. (Any such airplanes currently operated under part 121 are already required to comply.)

Contrary to one commenter's belief, the present smoking ban on domestic flights does not eliminate the need for lavatory smoke detection and fire extinguishment. On the contrary, the smoking ban could increase the temptation for some passengers to smoke illicitly in the lavatory and thereby increase the possibility of a fire originating in that compartment. The presence of a smoke detector serves as a deterrent to illicit smoking as well as a means of warning when it does occur.

Contrary to the commenter's belief, the presence of a flight attendant in the cabin would not compensate for the lack of a lavatory smoke detector and fire extinguisher. A lavatory is designed with an effective ventilation system to preclude normal odors from entering the cabin. In the absence of a smoke detector, the ventilation systems also precludes early detection of illicit smoking or a fire by persons in the cabin. In addition, the materials typically contained in the waste receptacles are highly flammable and could burn out of control quickly if there were no automatically discharging extinguishers. It is possible that a flight attendant would not know the fire exists until it has grown to catastrophic proportions.

The cost estimates provided by two commenters appear to be based on a misunderstanding concerning the qualifications of a required lavatory smoke detector. Such detectors serve primarily to enhance the capability of crewmembers to detect lavatory fires visually. They are, therefore, not required to meet all of the performance and environmental requirements applicable to primary detectors used in isolated compartments, such as cargo compartments. Anything that meets the ordinary dictionary definition of a lavatory would be covered by this requirement.

Therefore, because the adverse service experience that prompted the adoption of § 121.308 applies equally to any airplane, large or small, with a lavatory and because the commenters' cost estimates are obviously based on a misunderstanding of the required smoke detector qualification, the FAA is adopting this requirement in substance as proposed. The final rule has been revised to provide operators 2 years from the date of publication to comply with the lavatory smoke detector system and fire extinguisher requirements. In addition, the rule states that operators of 10- to 19-seat airplanes that have a lavatory must have a smoke detector system or equivalent that provides either a warning light in the cockpit or an audio warning that can be readily heard by the flightcrew. This will accommodate airplanes that do not have flight attendants.

Emergency equipment inspection. Section 121.309(b) requires that each item of emergency and flotation equipment must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purpose. Section 135.177(b) contains a similar requirement for part 135 operators of airplanes with more than 19 seats. In this section, the FAA proposed requiring affected commuter operations, including those with airplanes of 10 to 19 seats, to comply with the existing part 121 requirement. Other provisions in the proposal would require affected commuters to install additional emergency equipment. No comments were received on this issue and the final rule is adopted as proposed.

Hand-held fire extinguishers. Sections 121.309(c) and 135.155 contain similar requirements for hand-held fire extinguishers aboard airplanes. Part 121 requires at least two of the fire extinguishers to contain Halon, or an equivalent, and mandates placement of the fire extinguishers, while part 135 does not. In Notice 95–5, the FAA proposed that affected commuters comply with the part 121 requirements for fire extinguishers and that § 121.309(c)(7) be amended to require that at least one of the fire extinguishers in the passenger compartment contain Halon or the equivalent. No comments were received on this issue and the final rule is adopted as proposed.

First aid kits and medical kits. Section 121.309(d) requires that both approved first aid kits and approved emergency medical kits be carried on board passenger-carrying airplanes. The medical kits are intended to be used only by medically qualified persons, such as doctors, who may be on board the airplane. Section 135.177(a)(1) requires first aid kits to be carried on board airplanes with more than 19 passengers.

The FAA proposed that first aid kits be required for all airplanes with more than 9 passenger seats operating under part 121 and medical kits be required for airplanes that are required to have a flight attendant. The FAA stated in Notice 95–5 that, after review of the comments, the FAA might decide to require a medical kit for all 10–19 seat airplanes.

In Notice 95–5 the FAA pointed out that affected commuters would have to comply with a recent rule requiring disposable latex gloves for first aid kits and medical kits.

Comments: Six commenters disagree with the proposed requirement to have first aid kits on 10- to 19-seat airplanes. Most of the commenters cite lack of space and the lack of necessity for the equipment. Commenters believe that the first aid kit would not provide enough of a medical benefit to justify its cost. Two of these commenters oppose the addition of latex gloves as part of the first aid kit. One commenter believes that the equipment would place additional liability on employees. One commenter concurs with both proposed requirements.

Two commenters provide additional cost information for first aid kits. One of the commenters estimates $1,500 per airplane and the other estimates $1,500 without specifying the number of entities involved (i.e., airplane(s) or fleet).

AACA agrees with the requirement for first aid kits on all commuter airplanes whether a flight attendant is available or not. According to the commenter, regardless of the size of the airplane, inflight emergencies could occur and a first aid kit may be needed. In the

absence of a flight attendant, a crewmember or passenger could use the first aid kit. The commenter also estimates costs of $4,359 for Alaskan commuter air carriers in the first year and $436 each year thereafter to meet the requirement, but there is no explanation of the detail.

Four commenters disagree with the required medical kits on 20 to 30 seat airplanes. These commenters cite lack of space and the lack of necessity for the equipment. Three commenters argue that medical kits should not be required on airplanes with less than 30 seats due to the lack of trained personnel and the low likelihood that a medical professional would be on board. One commenter believes that the equipment would place additional liability on employees. One commenter concurs with the proposed requirements.

One commenter provides a cost estimate of about $2,000 per airplane for the medical kit requirement. However, the cost estimate is not supported by any documentation.

FAA Response: The FAA maintains that certain of these requirements are necessary to enhance safety. The ability to respond in the early stages of a medical emergency is critical and could save lives in the event of an in-flight injury or an accident. Additionally, the FAA maintains that latex gloves as were required by a 1994 rule change (59 FR 55208, November 4, 1994) should be included in these first aid kits because they guard against transmission of disease through spilled blood. In sum, no commenter provides any compelling reason to eliminate the first aid kit requirement, especially considering that these airplanes often operate in remote areas where medical assistance may not be available. The FAA has determined that emergency medical kits will be required for airplanes requiring a flight attendant. For airplanes not having a flight attendant, requiring a medical kit poses problems, such as a lack of security, no one to monitor the use of the kit, and no one to check the credentials of a person who professes to be a doctor and able to administer the medical treatment.

The regulations allow flexibility in the location and mounting methods of kits. Depending on the weight of the kit and Velcro surface area, Velcro may be sufficient. Even if Velcro is not practical in a particular instance, other low-cost alternatives, such as leather straps with buckles, are acceptable.

Crash ax. Section 121.309(e) requires that each airplane be equipped with a crash ax, while § 135.177 requires a crash ax for airplanes with a passenger seating configuration of more than 19 passengers. Under part 135 the crash ax is to be accessible to the crew but inaccessible to the passengers during normal operations. The FAA proposed in § 121.309(e) to require a crash ax for each airplane that has a flight deck separate from the passenger cabin and a lockable door.

Comments: One commenter disagrees with the FAA assertion in Notice 95–5 that the crash ax is useful only for egress from the flight deck to the cabin in the event of an emergency. The commenter says that the Airplane Flight Manual of one popular 19-seat commuter airplane suggests that preparation for certain gear-up landings include opening an overwing exit inflight, because even relatively minor distortion of the fuselage in a small airplane can render exits unusable. Thus, the crash ax could be used for prying open an exit.

Raytheon states that if a key lock is required as proposed on lockable doors in 10- to 19-seat airplanes, then a crash ax would be required. The commenter states that removal of the door would eliminate the requirements for a lock and a crash ax.

A third commenter supports the proposal as written in Notice 95–5 to require a crash ax only in airplanes that have a separate flight deck with a lockable door.

FAA Response: The primary purpose in requiring that a crash ax be carried is to allow emergency egress after an accident if airplane exits are unuseable. However, the FAA agrees with commenters that there could be other uses for the ax including egress of the cockpit crew.

After considering the comments and reviewing the proposed requirement, the FAA has determined not to require crash axes on nontransport category airplanes type certificated after December 31, 1964, primarily because these airplanes are not required to have a lockable door. The FAA has determined that the lockable doors that exist in nontransport category airplanes type certificated after December 31, 1964, are frangible and obviate the need for a crash ax on the flight deck. Also carrying a crash ax in these airplanes creates a security risk since the ax would not be inaccessible to passengers.

Emergency evacuation lighting and marking requirements. Section 121.310(c), by referencing § 25.812(e), requires emergency evacuation lighting for passengers when all sources of illumination more than 4 feet above the floor are totally obscured. This requirement applies to all transport category airplanes regardless of how many passenger seats they have. There is no corresponding requirement in part 23 or in part 135 for airplanes having a passenger-seating configuration of less than 20 seats.

Section 121.310(d) for emergency light operation requires that each light required by paragraphs (c) and (h) must be operable manually and must operate automatically from the independent lighting system. As proposed, these requirements would apply to affected commuters. In § 121.310(d)(2)(i) each light must be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat.

Section 121.310(e) requires that an exit operating handle may not be used if its brightness decreases below a specified level. Section 135.178(e) contains an identical requirement for airplanes having a passenger seating configuration of more than 19 seats. Under the proposal the requirement would also apply to airplanes with a passenger configuration of 10–19 seats.

Section 121.310(f) contains standards for access to various exit types that presently apply only to transport category airplanes. Section 135.178(f) is identical to § 121.310(f) for airplanes having a passenger configuration of more than 19 seats. The FAA proposed to amend § 121.310(f) to exclude nontransport category airplanes.

Section 121.310(g) (and its parallel requirement in § 135.178(g) for more than 19 passenger seat airplanes) requires emergency exits to be marked on the outside by a 2-inch band contrasting in color with the surrounding fuselage. Most airplanes with a passenger-seating configuration of less than 20 seats operating under part 135 are already required to meet this requirement and, for those that do not, compliance with this requirement as proposed would merely require painting the bands around each exit.

Section 121.310(h) requires airplanes for which the application for type certification was made before May 1, 1972, to meet the exterior emergency lighting standards of § 25.812, in effect on April 30, 1972, or any later standards in effect if the application for type certification was made later. The FAA proposed to require nontransport category airplanes type certificated after December 31, 1964, (i.e., part 23 normal and utility category) to comply with § 25.812 in effect April 30, 1972, within 2 years after the publication date of a final rule.

The FAA proposed that airplanes with a passenger-seating configuration of less than 20 seats previously operated under part 135 be required to comply with the above-described emergency

lighting systems (that is, emergency exit signs, interior lighting, exit handles, and exterior lighting) and, except for the marking requirement discussed above, proposed a compliance date 2 years after the publication date of a final rule.

Comments: Sixteen comments were received on proposed § 121.310. All commenters oppose the proposal to retroactively require any additional emergency exit signs or emergency lighting on 10-to-19 passenger seat commuter airplanes.

Several commenters state that the cost of retrofitting in-service airplanes with an emergency lighting system would be much more expensive than the FAA expected when the notice was prepared.

Six commenters note the size of the cabin area of these airplanes and that no person is seated more than 8 feet (or two or three rows) from an exit. One of these six also notes that no person is more than 12 feet from two exits.

Four commenters note that an emergency evacuation demonstration is required for the certification of commuter category airplanes and that these demonstrations have shown that the airplanes can be evacuated, under conditions of total darkness, in less than 90 seconds. Two other commenters note that there is no known service history or adverse accident data related to commuter operations to support the need for this proposal. Therefore, all six of these commenters believe there is no justification for the proposal and each of them recommends that it be withdrawn.

One commenter believes that the current briefing on exit locations and their use is sufficient and that no further action is needed. Two commenters believe that the requirement in § 121.310(c)(3) to show compliance with § 25.812(e) does not add any safety to these airplanes. They point out that the height of the ceiling in their airplane is only 4¾ feet high and question the need to comply with the provision of § 121.310, which requires compliance with § 25.812(e). Section 25.812(e) requires escape path markings for passenger guidance, ''when all sources of illumination more than four feet above the cabin aisle floor are totally obscured.'' According to commenters, with a ceiling height of only 4¾ feet, it is likely that the required exit markings are located less than 4 feet above the floor and that compliance with § 121.310(c)(3) is not necessary. Another commenter believes that the requirement in § 25.812 for emergency lighting to operate for 10 minutes is not needed for these airplanes. The commenter points out that the required emergency evacuation time for these airplanes is much less than 10 minutes and that this requirement should be adjusted accordingly. One other commenter suggests that flashlights be made available. Finally, two commenters acknowledge that emergency lighting may enhance safety; however, they also believe that this enhancement in safety can be provided by a lighting system that is less expensive, less complex, and much lighter than the one envisioned by § 121.310. Accordingly, they provide some suggestions for such a system.

Embraer, a foreign manufacturer of transport category airplanes, believes that § 121.310(f) should also be amended to exclude smaller (e.g., 20 to 30 passenger) transport category airplanes as well as nontransport category airplanes. The commenter believes that a passenger seat would have to be removed from its product for operation under part 121 if smaller transport category airplanes were not also excluded from this section.

AACA supports the proposed amendment to § 121.310(g).

The only other comment received concerning this issue was from an individual who requests resolution of the issue of whether the 2-inch wide contrasting band has to be on the fuselage surrounding the emergency exit or on the exit itself.

FAA Response: Section 23.803 does require an emergency evacuation demonstration, as noted by the commenters; however, the demonstration is required primarily to compensate for the differences in evacuation design features (e.g. aisle width, exit size, etc.) required by part 23 and those of part 25. Like the demonstrations required by part 25 for airplanes with more than 44 passengers, the demonstrations are intended to evaluate the evacuation capability of the airplane under standard conditions and are not intended to show the evacuation capability of the airplane under the most adverse condition that could be encountered. They are not intended, for example, to demonstrate the evacuation capability of the airplane when there is dense smoke in the cabin or when there is hazardous, damaged structure in the vicinity. The applicability of the required evacuation demonstrations to the need for emergency lighting is therefore limited.

Passengers must egress rapidly in the event of fire. Contrary to the commenters' assertions concerning a lack of adverse service experience, the FAA is aware of at least six instances since 1980 in which passengers had to be evacuated because of fire from such nontransport category airplanes or transport category airplanes with cabins of similar size. There is no doubt that safety can be enhanced considerably by requiring compliance with the emergency lighting requirements proposed in Notice 95–5. Nevertheless, the installation of such lighting is very costly.

In response to excluding smaller airplanes from the requirements pertaining to access to exits, § 121.310(f)(2) states, in part, that there must be enough space next to each Type I or Type II emergency exit to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that required (20 inches wide). Part 135 contains the same requirement for airplanes having a passenger seating capacity of more than 19 seats.

Since the commenter's product has more than 19 passenger seats and numerous examples are already in service in this country, the airplanes have presumably been shown to comply with either § 135.178(f)(2) or the identical text of § 121.310(f)(2). Thus, this rulemaking would not impose any new burden on airplanes with more than 19 passenger seats.

Section 121.310(g) states that exterior exit markings ''must be a 2-inch wide colored band outlining each passenger exit on the side of the fuselage.'' Since the band is outlining the exit it would be on the fuselage, not on the exit.

After reviewing the costs and benefits associated with the proposed emergency lighting requirements, the FAA has decided to revise the final rule as follows:

1. The floor proximity lighting requirements in § 121.310(c) will apply to all airplanes except non-transport category airplanes type certificated after December 31, 1964. In effect, this is not a change from current requirements. Affected airplanes with 10 to 19 passenger seats will not have to comply because of the small cabin size, the probability that passengers would be able to find the emergency exits without floor lighting, and the high cost of retrofitting for these requirements.

2. The interior light operation requirements of § 121.310(d) do not apply in the final rule to nontransport category airplanes certificated after December 31, 1964, since the requirements of § 121.310 (c) and (h) apply only to transport category airplanes.

3. The requirement for an illuminated exit operating handle (§ 121.310(e)) remains as proposed. The compliance date for retrofit requirements for 10- to 19-seat airplanes is 2 years after publication of the final rule.

4. Section 121.310(f) was proposed to apply to airplanes with a passenger-seating configuration of more than 19 seats. This remains in the final rule.

5. The requirement for marking emergency exits on the outside in § 121.310(g) remains as proposed since compliance is relatively simple and inexpensive for all affected operators.

6. The exterior lighting standards in § 121.310(h) are revised to except nontransport airplanes type certificated after December 31, 1964..

Seatbacks. Section 121.311(e) prohibits a certificate holder from taking off or landing unless passenger seats are in the upright position. Section 135.117 requires only that passengers be briefed that seats should be in the upright position. The FAA proposed that affected commuters be required to comply with § 121.311.

Comments: One commenter objects to the requirement because the pilots cannot assure compliance in a 19-seat airplane, especially during landing.

FAA Response: The FAA intended for those flights with flight attendants to be operated in accordance with the current § 121.311. For these flights on nontransport airplanes type certificated after December 31, 1964, the FAA has included wording to clarify that the pilot must only instruct the passengers to place their seatbacks in the upright position. The final rule has also been revised to add a new subparagraph to § 121.311(e) that provides that on an airplane with no flight attendant, the certificate holder may take off or land as long as the flightcrew instructs each passenger to place his or her seatback in the upright position. This change is needed to clarify what is required for airplanes that do not have a flight attendant.

Seat belt and shoulder harnesses on the flight deck. Section 121.311(f) requires a combined seat belt and shoulder harness with a single-point release that meets the requirements of § 25.785. Part 135 does not contain a requirement for a single-point release system although the FAA believes that virtually all commuter category airplanes being manufactured today have such a system. To ensure that this is the case for newly manufactured airplanes, the FAA proposed in § 121.2(e)(1) to require that airplanes manufactured after 1 year after publication of the final rule meet the requirements of § 121.311(f).

Comments: One commenter concurs with the proposal.

FAA Response: The final rule remains substantively as proposed, except that compliance is within 15 months after publication of the final rule. However, to clarify that § 121.311(f) applies to newly manufactured nontransport category airplanes, appropriate language is added to that paragraph.

The final rule also revises § 121.311(h) to allow crewmembers for affected commuters to release the shoulder harness if they cannot perform their duties otherwise.

Interior materials and passenger seat cushion flammability. Section 25.853(b) was amended in 1984 to require seat cushions to meet greatly enhanced flammability standards. At the same time, §§ 121.312(b) and 135.169(a) (but not for commuter category airplanes) were amended to require airplanes already in service to meet the improved seat cushion flammability standards after November 1987. In the years that have passed since that date, the improved cushions are credited with saving a number of passengers' lives.

The FAA proposed to require nontransport category airplanes type certificated after December 31, 1964, to comply with the same seat cushion flammability standards that apply to other airplanes operated under part 121. The proposed compliance date was 2 years after the publication date of the final rule or on the first replacement of the cushions, whichever occurs first. The proposed rule also allowed for granting deviations for up to 2 additional years when justified by unique integral-seat cushion configurations.

The FAA also proposed that the interior components of nontransport category airplanes manufactured after 4 years or more after the publication date of the final rule must meet the same standards that those components must meet when installed in transport category airplanes with 19 or fewer passenger seats. Those standards, which involve testing with Bunsen burners, are not to be confused with the Ohio State University (OSU) radiant rate of heat release testing required for large-surface-area components installed in airplanes with 20 or more passenger seats. (See proposed § 121.2(e)(2)(ii).)

Comments: ALPA supports the proposed retroactive requirements, including this proposal.

Fairchild and AIA present identically worded statements opposing the proposed requirement that seat cushions would have to comply with the flammability standards of §§ 25.853(b) and 121.312(b). In that regard, they state that they know of no evidence that compliance would provide a significant safety benefit in 10 to 19 passenger airplanes. They do not believe that compliance would delay the spread of a fire enough to be an important factor in survival. In that regard, they note that the seats in smaller airplanes tend to be lightweight and offer relatively little mass of material to fuel a fire. Also, they believe that cabin fires are less likely to occur because the small size of the cabin restricts the amount of carry-on baggage and makes inappropriate passenger activity less likely. Finally, they believe that the FAA would have proposed such rulemaking already if warranted. NATA also believes the higher flammability standards would not be effective in smaller airplanes. That commenter asserts the cost of compliance would be $20,000 per airplane.

Commuter Air Technology observes that the Beech King Air executive airplanes they modify for commuter air service would not have to comply in their original executive configuration because they have fewer than ten seats, yet would have to comply as modified because they have more than ten seats.

Big Sky Airlines and RAA suggest that the compliance period should be extended to enable replacement during the routine seat replacement cycle. One of these commenters quotes a compliance cost of $30,000 for each 19 passenger airplane.

Mesa does not express support or opposition to the proposal, but states that compliance would entail $12,000, 36 pounds, and 10 hours for a Beech 1900C, or $3,400, 38 pounds, and 10 hours for either a Beech 1900D or Jetstream 3100.

No comments were received concerning the proposal to require commuter category airplanes produced four years or more after the effective date to comply with the Bunsen burner test of part 25 (§ 25.853(a)). One commenter states that the installation of interior materials complying with § 25.853(c) would not improve the level of safety of airplanes with 10 to 19 passenger seats.

FAA Response: The commenters focus on the cost of compliance and the lack of a need for added fire protection in smaller airplanes.

In regard to costs, the commenters appear to have a misconception concerning the scope of the rulemaking. The costs fall into one of two categories—the cost of developing and testing suitable cushion materials and the actual cost of replacing individual seat cushions. In regard to the former, § 25.853(c) does not require each seat cushion to be tested, nor does it require each seat cushion design to be tested. Instead it simply states that each cushion must meet the flammability standards. An applicant has the option of utilizing a seat cushion material that meets the flammability standards;

however, most choose to comply by using a covering material that protects the cushion from the fire. (The latter are usually referred to as ''fire-blocked seats.'') Individual seat cushions or individual seat cushion designs do not have to be tested if they can be shown to meet those standards by similarity to other cushions that have been tested previously and found to meet the standards. Advisory Circular (AC) 25.853–1, Flammability Requirements for Aircraft Cushions, issued September 17, 1986, provides guidance in that regard. In the years that have passed since transport category airplanes used in part 121 or 135 service were first required to comply, many different possible seat cushion designs have already been tested and found satisfactory. It is, therefore, quite possible to utilize a seat cushion material or fire-blocking material that has already been shown to comply with the flammability standards. In that regard, many of the affected airlines are affiliated with major airlines and have ready access to the same means of compliance adopted several years earlier by those major airlines.

Contrary to some commenters' beliefs, the use of seat cushions meeting these flammability standards is quite effective in the cabins of smaller airplanes. Some commenters note that the amount of cushion material is relatively small in 10- to 19-passenger airplanes. While the amount of cushion material in those airplanes is obviously much less than that in larger airplanes, it represents approximately the same portion of the total flammable material in those airplanes as in the larger airplanes. In addition to representing a large portion of the materials in the cabin that are flammable, the foam materials typically used for seat cushions are, by far, the most flammable of all the materials used in the cabin. A secondary, but no less significant, benefit is that cushions meeting these flammability standards are much less likely to ignite and sustain a flame than those that do not meet the standard. Precluding a fire from occurring is obviously the best possible form of fire protection.

The FAA conducted a series of 12 full-scale fire tests at its Technical Center at Atlantic City, New Jersey, using the fuselage of a Metroliner. The cabin of the Metroliner is typical of those of the part 23 Normal or Commuter Category airplanes with 10 to 19 passenger seats. Under the test conditions, it was shown that using seat cushions meeting these flammability standards, in lieu of the flammability standards that would otherwise be applicable, would afford passengers approximately 45 additional seconds in which to escape.

The primary benefit of having seat cushions that meet these flammability standards is to afford occupants more time in which to egress in a post-crash fire situation; however, such cushions also provide additional protection should an inflight cabin fire occur. Contrary to the beliefs of commenters in that regard, the FAA is aware of at least six instances in which cabin fires have been experienced since 1980 in nontransport category airplanes or transport category airplanes with cabins of similar size.

In their recommendation A–88–96, the National Transportation Board (NTSB) recommended the use of fire-blocking materials on seats in part 23 normal and commuter category airplanes. Fairchild, AIA, and others state that the fact that the FAA has not previously adopted seat cushion flammability standards for those airplanes is evidence that they would not result in a significant improvement in safety. The FAA has, in fact, initiated separate rulemaking in that regard (Notice No. 93–71, 58 FR 38028, July 14, 1993).

The intent of Notice 95–5 was to mitigate the cost by allowing compliance to coincide with the normal wear replacement cycles. Since compliance can be achieved whenever the seat cushions or seat coverings are being replaced due to normal wear, the cost of compliance for each seat is just the additional cost of including the fire-blocking layer along with the covering.

Based on the above, the FAA has decided to adopt the seat cushion flammability standards of § 121.312(c), but to allow a compliance period of 15 years after the publication date of this rule. The FAA felt that the immediate cost of this retrofit would have negatively affected the industry. By allowing up to 15 years, it should be possible for all replacements to be scheduled within normal replacement cycles. An additional benefit of a 15-year compliance period is that certificate holders can coordinate their compliance with this section with their plans for meeting other extended compliance times, i.e., meeting the performance and accelerate-stop requirements and installation of a third attitude indicator.

As noted above, the FAA also proposed that the interior components of nontransport category airplanes newly manufactured 4 years or more after the publication date of the final rule must meet the same standards that those components must meet when installed in transport category airplanes with 19 or fewer passenger seats (i.e. Bunsen burner testing). After reviewing the present requirements, the FAA determined that the interior components of those airplanes are already required to meet the same flammability standards for type certification. Since the standards are identical, it is not necessary to specify the flammability standards as an additional requirement for newly manufactured airplanes. Section 121.312(a) has been amended in the final rule to clarify the applicability of the flammability standards to nontransport category airplanes used by affected commuters.

Section 121.312 provides the interior material flammability standards for airplanes operated under that part. As described above, the substantive provisions of that section are being retained, and the provisions applicable to airplanes being brought over from part 135 are being incorporated. In this final rule, § 121.312 is reorganized to highlight the applicable provisions and to provide greater clarity; the appropriate substantive text has been retained. Furthermore, appendix L is being added to part 121 to explain the regulatory citations for the part 25 provisions that have been superseded. Although those standards are not current insofar as new type certification under part 25 is concerned, they are referenced in part 121 and remain applicable for compliance. The addition of appendix L only clarifies existing requirements; therefore, it is adopted without prior notice and comment.

Miscellaneous Equipment. Notice 95–5 specifically discussed the proposal that would require affected commuters to comply with the miscellaneous equipment requirements of § 121.313(f) and (g). However, although not specifically discussed in Notice 95–5, § 121.313(c) pertaining to a power supply and distributive system would also be required.

Comments: Fairchild Aircraft notes that § 121.313(c) requires a power supply and distribution system that meets the requirements of six sections of part 25. Because § 121.313(c) does not assign an effective date to this list of part 25 sections, Fairchild assumes that it is the current version of each section that would be applicable. Fairchild also questions whether all airplanes currently operated under part 121 meet the current standards of part 25. Based on their assumption that their airplanes would have to meet current sections of part 25 and the fact that SFAR 23 and SFAR 41 airplanes do not meet those requirements, Fairchild proposes amending § 121.313(c) to except nontransport category airplanes type certificated after December 31, 1964, from this requirement.

FAA Response: The commenter has correctly identified the sections of part

25 that are listed in § 121.313(c): however, the commenter has apparently overlooked the alternative provisions contained in that section. In part, § 121.313(c) also reads: ''or that is able to produce and distribute the load for the required instruments and equipment * * * .'' This additional text of § 121.313(c) allows the use of a power supply and distribution system that performs this function regardless of whether it complies with the listed sections of part 25. The commenter's proposed amendment is not needed because § 121.313(c) already includes provisions for alternate means of compliance. The commenter's products have already been shown to comply with this alternative.

The commenter is correct in believing that some airplanes currently operated in part 121 service might not meet the current sections of part 25 listed in § 121.313(c). The issue is moot, however, since § 121.313(c) provides for alternative means of compliance.

Cockpit doors and door keys. Section 121.313 (f) and (g) require that there be a lockable door between the cockpit and the cabin and that there be a key for each cockpit door that is readily available to each crewmember. Part 135 does not have such requirements. The FAA proposed that the affected commuters be required to comply with the part 121 rules if there is a door with a lock or a door that can be retrofitted with a lock. (Curtains or accordion doors are not considered lockable doors.) If a lockable door already exists or can be retrofitted, the certificate holder would be required to provide a cockpit key that is readily available to each crewmember. Accordingly, the language of § 121.313(f) was changed to except nontransport category airplanes certificated after December 31, 1964, without a door. Transport category airplanes already are required to have a door and a lock with a key.

Comments: Most of the comments received on this issue oppose the requirement for a locking cockpit door and key. Several commenters say that the cockpit door on EMB–120 airplanes cannot be locked when the observer jumpseat is in use. These commenters are concerned that strict adherence to the wording of the rule would require them to retrofit the door, redesign the cabin, and probably remove a revenue seat, all at a high cost. These commenters recommend that the EMB–120 be exempted from the requirement when the observer jump seat is in use. One commenter states that some nontransport category aircraft that will transition to part 121 do not have a cockpit door lock and key and may not be able to install one. One commenter states that operators will be required to obtain a supplemental type certificate to retrofit airplane doors with key locks. Another commenter states that this requirement would force operators to choose between removing the high-quality cockpit door installed at great expense on BE 1900D aircraft which provides protection from cabin illumination glare during night operations, or installing and using a lock on this door, both of which are contrary to safety. One commenter states that the 1900C and 1900D airplanes have frangible doors between the cockpit and cabin to reduce distractions. According to the commenter, as proposed, the rule would require installation of locks on those doors. Finally, one commenter says that the wording of the cockpit door requirement should be clarified to exclude 10 to 19 seat aircraft not yet produced. According to the commenter, the proposal resolves the problem for existing 10–19 seat airplanes. However, proposed § 121.2(f) would require all new airplanes to be certificated in transport category. The commenter states that new 10–19 passenger airplanes will have the same problem as existing nontransport category types; that is, cockpit doors will neither be practical nor appropriate. The commenter recommends amending § 121.313(f) to read ''* * * except that airplanes type-certificated for a maximum of 19 or fewer passengers are not required to comply with this paragraph.''

AACA notes that the language of § 121.313(f), which lists required equipment for operating an aircraft, should be changed to exclude airplanes that do not have cockpit doors.

FAA Response: The FAA maintains that the cockpit key and door lock requirement should be retained to enhance aviation safety. However, the final rule language is clarified to require compliance only for airplanes with a passenger-seating configuration of 20 or more seats. Therefore, the requirement for a door lock and cockpit key does not apply to nontransport category airplanes type certificated after December 31, 1964 even if the airplane has a cockpit door.

In response to the comments regarding the EMB–120, § 121.587 allows for the door to remain open, if necessary, to provide access for a person authorized admission to the flightcrew compartment. This allows for the door to be open if the jump seat is in use by an authorized person. Section 121.587 applies to large airplanes which includes the EMB–120.

The FAA acknowledges that the commenters correctly state that keyless locks in airplanes with a passenger seating configuration of 20 or more would have to be retrofitted to work with keys. Certificate holders that would have to retrofit their door locks would incur a higher cost to comply with the requirement. Yet, the FAA strongly believes that keyless locks which only lock from the cockpit side pose a severe safety hazard if the pilots become incapacitated. The FAA maintains that an extended time period to retrofit locks is not justified in light of the many other new requirements which are even broader in scope.

Cargo and baggage compartments. Part 25 (as referenced in § 121.314) contains requirements for cargo or baggage compartment liners, smoke detection, and fire extinguishment for various classes of compartments. The compartment classification system, also duplicated in § 121.221 (which as previously discussed applies only to certain airplanes type certificated before November 1, 1946), is based on the compartment's accessibility for fire detection and extinguishment. Part 25 was amended in 1989 to require the liners of Class C and D compartments to meet more stringent flammability standards. Section 121.314 was also adopted at that time to require the improved liners in existing transport category airplanes on a retroactive basis.

Part 23 contains no classification system or requirements for compartment fire protection; however, a proposed rule to add comparable requirements was issued on July 22, 1994 (59 FR 37620). The FAA proposed in § 121.2(e)(2)(ii) by referencing § 121.314 to require this modification for commuter category (or its predecessor) airplanes manufactured 4 years or more after the publication date of the final rule. However, in Notice No. 95–5, the FAA did not propose to amend § 121.314, which currently applies only to transport category airplanes.

Comments: Two commenters submitted identical comments concerning this proposal. Both commenters believe that the cargo or baggage compartment classification system of § 25.857, referenced in § 121.314, is not suitable for smaller airplanes with fewer than 20 seats and that the smoke detector and fire extinguisher requirements are unreasonable and unnecessary in those airplanes. In that regard, they note that many commuter category airplanes are convertible from a full passenger configuration with a relatively small baggage compartment to combination passenger/cargo (combi) configurations

to cargo only. They do not believe that it is practical to modify any of the combi configurations to comply with any of the cargo compartment classes defined by § 25.857. They assert there has been no history of service problems indicating a need for such features.

No comments were received concerning compartments other than those of combi airplanes. Also, no commenters responded to the request in the preamble to Notice No. 95–5 for information concerning less-costly alternatives such as requiring only liners and smoke detection.

FAA Response: The FAA agrees that the present requirements of § 25.857 are not entirely suitable for airplanes with a passenger seating capacity of less than 20 and the FAA has initiated a rulemaking project to develop and propose similar standards that would be suitable for these airplanes. In view of this project the FAA has decided to defer this proposal for future rulemaking.

Fuel tank access covers. As a result of the 1985 Manchester British Air Tours accident (in which a piece of metal from the aircraft engine punctured the fuel tank access panel and created a fire), § 25.963(e) was amended in 1989 to require that all covers located in an area where a strike by foreign objects is likely must have as much resistance to fire or debris penetration as the surrounding structure. Concurrent with the part 25 amendment, § 121.316 was amended to require airplanes already in service to comply with § 25.963(e) on a retrofit basis. These requirements pertain to all transport category, turbine-powered airplanes. Due to their smaller size and turbo-propeller configuration, part 23 airplanes generally do not present the same hazard. The FAA did not propose to require part 23 airplanes to comply with §§ 25.963(e) and 121.316. Since § 121.316 applies only to ''turbine-powered transport category'' airplanes, no rule change is needed. The FAA points out that turbine-powered transport category airplanes previously operated under part 135 would have to comply with § 121.316.

Comments: Raytheon Corporation submitted comments on the costs of complying with § 25.963(e) for airplanes that in the future would be required to be type certificated in the transport category under part 25.

FAA Response: As previously discussed, the applicability of all present part 25 requirements to airplanes with a passenger seating capacity in the 10–19 range for which a type certificate is applied for after March 29, 1995, will be dealt with in a future rulemaking action. Since Notice No. 95–5 did not propose any change for airplanes in existence or for airplanes newly manufactured under existing type certificates, this issue need not be discussed further in this rulemaking.

Passenger information. Notice 95–5 proposed that affected commuters would comply with the passenger information requirements in § 121.317. There was no preamble discussion of this section because the FAA determined that current requirements for affected commuters in §§ 135.127 and 91.517 were substantively the same as those in § 121.317.

Comments: Three comments were received on this section. Commuter Air Technology suggests that seatbelts should be worn the entire time for flights of less than an hour and a half. According to the commenter, requiring seatbelts at all times while engines are running would provide better passenger safety, remove an unnecessary checklist item from the flight station, and eliminate the probability of missing a flight due to an inoperative sign. According to the commenter, each seat could be placarded and the co-pilot could make a visual check of passenger compliance after closing the door hatch prior to departure.

Two commenters state that § 121.317(a) should be revised to allow permanently lighted no-smoking signs or conspicuous placards, since smoking is prohibited on all flights.

FAA Response: Section 121.317 sets minimum requirements. Both §§ 121.317 and 135.127 allow the use of no smoking placards that meet the requirements of § 25.1541 if the placards are posted during the entire flight segment. Section 121.317(a) requires passenger information signs (fasten seatbelt signs and no smoking signs) that the pilots can turn on and off and § 121.317(b) specifies when fasten seatbelt signs must be turned on. To ensure that the present requirements of § 121.317 are not interpreted so as to prohibit the use of placards in certain airplanes, a clarifying amendment is included in the final rule. New § 121.317(l) provides that a person may operate a nontransport category airplane type certificated after December 31, 1964, having a passenger-seating configuration of 10–19 seats manufactured before 15 months after the publication date of this final rule if it is equipped with one placard that is legible to each person seated in the cabin that states ''Fasten Seat Belt'' if the flightcrew orally instructs the passengers to fasten their seatbelts at the necessary times. Newly manufactured airplanes must comply with lighted seat belt sign requirements of § 121.317(a) within 2 years after the date of publication of this final rule. In addition, § 121.317(d) requires one legible sign or placard that reads ''fasten seat belt while seated'' that is visible from each passenger seat. Affected commuters must comply with § 121.317(d) at the time of recertification under part 121, or within 15 months, whichever occurs first.

Instruments and equipment for operations at night. Section 121.323 requires two landing lights for night operations. Under the proposal, the requirement would apply to all affected commuters. While no comments were received on the proposal, the FAA had intended to revise § 121.323 to except nontransport category airplanes certificated after December 31, 1964, from having more than one landing light. The exception was intended because small airplanes with shorter wing spans can be operated safely with only one landing light. The exception was inadvertently omitted from Notice 95–5 but is included in the final rule.

Oxygen requirements. Sections 121.327 through 121.335 cover supplemental oxygen requirements and oxygen equipment requirements. The requirements are similar to the oxygen requirements in § 135.157 except that for certain airplanes, part 121 requires less oxygen. Each affected commuter who would have to comply with part 121 oxygen requirements as a result of this rulemaking should be able to operate its airplanes in accordance with the oxygen requirements specified in part 121.

Comments: Fairchild Aircraft comments that the first aid oxygen requirements of § 121.333(e)(3) are inappropriate for smaller commuter service and that this section should be revised to exclude airplanes with fewer than 20 seats. This commenter also asks that § 121.335 be revised to allow oxygen flow rates based on the airplane's certification basis rather than Civil Air Regulation 4b.651. Fairchild finds that this would avoid unnecessary complication and expense.

FAA Response: In the case of first aid oxygen, since Notice 95–5 proposed no flight attendant for the 10- to 19-seat airplane, requiring the first aid oxygen that would be dispensed by a flight attendant would not be logical. Since the airplanes operated by the affected commuters were not type certificated for flight above 25,000 feet and since § 121.333(e)(3) only applies to pressurized airplanes that operate above 25,000 feet, it would not as a practical matter apply to commuter (or predecessor) airplane operations. The requirement does apply to airplanes

with 20 to 30 passenger seats, as proposed.

In the case of § 121.335, the FAA finds that parts 23 and 25 provide standards for oxygen that either meet or exceed the standards in section 4b.651 of the CAR. Section 4b.651 has a built in deviation authority.

Portable oxygen for flight attendants. Section 121.333(d) requires that each flight attendant shall, during flights above 25,000 feet, carry portable oxygen equipment with at least a 15-minute supply of oxygen, unless enough portable oxygen units with masks or spare outlets and masks are distributed through the cabin to ensure immediate availability of oxygen to each flight attendant regardless of his or her location at the time of cabin depressurization. Part 135 does not have a similar requirement for portable oxygen for flight attendants. In Notice 95–5, the FAA proposed that affected commuters who use flight attendants in their operations and that operate above 25,000 feet be required to comply with the part 121 requirement. No comments were received on this issue and the final rule is adopted as proposed. For a related discussion on the use of oxygen, see the discussion under ''Oxygen Requirements.''

Protective breathing equipment (PBE). Section 121.337 contains requirements for equipping the flight deck and passenger compartments of transport category airplanes with PBE. Part 135 does not currently require any type of PBE.

Section 121.337(b)(8) (smoke and fume protection) requires PBE, either fixed or portable, to be conveniently located on the flight deck and easily accessible for immediate use by each flight crewmember for smoke or fume protection at his or her duty station. In addition, § 121.337(b)(9) (fire combatting) requires that for combatting fires a portable PBE must be located on the flight deck with easy access by each flight crewmember for fighting fires. Also portable PBE in the passenger compartment must be located within 3 feet of each hand fire extinguisher. Both of these requirements provide that the Administrator may authorize another location if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

The proposal required affected commuters to comply with the PBE requirements of § 121.337. To be in compliance, an airplane with a passenger-seating configuration of 10 to 19 seats would have to have at least three PBE: one PBE, fixed or portable, for each flight crewmember at his or her station, and an additional portable PBE on the flight deck for use in fighting fires. An airplane with a passenger-seating configuration of 20 to 30 seats would have to have at least four PBE: one PBE, fixed or portable, for each flight crewmember at his or her station; an additional portable PBE on the flight deck for fighting fires; and a portable PBE in the passenger compartment located within 3 feet of the required hand fire extinguisher.

The proposal revised the applicability of the current rule to include other than transport category airplanes. Proposed § 121.337(b)(9)(iv) was also revised to except airplanes having a passenger-seating configuration of fewer than 20 seats and a payload capacity of 7,500 pounds or less from the requirement to have a PBE in the passenger compartment. The exception is needed because these airplanes are not required to have a flight attendant; for these airplanes, the portable PBE on the flight deck could be used by a flight crewmember for fighting a fire.

The FAA proposed to require compliance with § 121.337 by a date 2 years after the publication date of the final rule. (See § 121.2)

Comments: Several commenters oppose the PBE requirement. These commenters are concerned about the lack of space in the plane, the high compliance cost, and the lack of benefits in having the equipment. These commenters state that PBE equipment on non-pressurized aircraft is not justified. Two commenters claim that their current equipment (built in oxygen supply systems and masks) ought to exempt them from the PBE requirement. One commenter incorrectly believes that a PBE would be required for the cabin on METRO aircraft (a 19 seat airplane). One commenter suggests that in the interest of safety the FAA should reduce the compliance time for PBE equipment to 6 months. Though commenters provide cost estimates to install PBE on their airplanes, costs are provided only for 10 to 19 seat airplanes, which would not be required to have PBE in the cabin.

FAA Response: The FAA maintains that the proposed PBE requirement for affected commuters is appropriate. There are several safety benefits for requiring smoke and fume PBE. The use of smoke and fume PBE required by § 121.337(b)(8) would help prevent the injury or death of flight crewmembers from smoke or harmful gases.

The FAA contends that there is adequate space in the cabin of 20- to 30-seat commuter airplanes to accommodate portable PBE for fire combatting, and no major cabin retrofits would be required. With regard to firefighting PBE, the FAA has determined that such equipment is not appropriate for operations with 10–19 passengers. There are no flight attendants on these flights and the pilots generally remain on the flight deck to operate the aircraft during an emergency. In an emergency, passengers will have access to a fire extinguisher and will be able to assist in extinguishing any flames within the cabin. However, passengers are not trained in the use of fire combatting PBE and would not know how to operate such equipment. Accordingly, nontransport category airplanes type certificated after December 31, 1964, having a passenger-seating configuration of 10- to 19-seats are excepted in the final rule from the requirements in § 121.337(b)(9) for having PBE's for combatting fires.

In response to other comments, the lack of a pressurized cockpit does not diminish the need for PBE to enhance safety in case of fire, nor can existing oxygen systems provide adequate protection for fighting a fire. Approved PBE in the cabin must have a protective hood and be fully mobile.

Due to the broad scope of this rulemaking action, certificate holders will have to deal with many new requirements. Therefore, as proposed, a consistent compliance period of 2 years is applied to all affected airplanes for acquiring PBE.

Emergency equipment for extended overwater operations. Sections 121.339 and 135.167 require that airplanes engaged in extended overwater operations (more than 50 nautical miles from the nearest shoreline) provide the following: enough life rafts of a rated capacity and buoyancy to accommodate the occupants of the airplane; a life preserver equipped with an approved survivor locator light for each occupant of the airplane; a pyrotechnic signaling device for each life raft; a survival kit and a survival type emergency locator transmitter. In addition, § 121.339 requires that unless excess rafts of enough capacity are provided, the buoyancy and seating capacity of the rafts must accommodate all occupants of the airplane in the event of loss of one raft of the largest rated capacity. In practice, this requirement is typically met by carrying a spare raft of the largest rated capacity.

The FAA proposed that the affected commuters that engage in extended overwater operations should be required to meet the part 121 requirements. As with current part 121 certificate holders, affected commuters can apply for deviations, and the FAA can decide, on

a case by case basis, if a deviation is appropriate. These deviations are issued pursuant to § 121.339(a) which permits the Administrator to allow deviation from the requirement to carry certain equipment for extended overwater operations. Since there are few extended overwater operations conducted by commuters, the FAA does not expect this proposed requirement to have a significant impact.

Comments: Four commenters argue against the requirement for a spare life raft on commuter airplanes. One commenter says that the spare life raft is not necessary because seats can be equipped with additional life vest storage pouches. Another commenter says that the spare life raft is appropriate for larger airplanes but not for 10 to 30 seat aircraft. This commenter also suggests that the rule should remain as presently written under § 135.167, and, on a case-by-case basis, the FAA can require certificate holders to obtain a spare life raft. Another commenter states that spare life rafts should not be required on aircraft with less than 20 passenger seats because the requirement will increase operating costs and reduce passenger revenues. A fourth commenter states that the cumulative weight, space, and compliance costs will be significant for affected Alaskan operators and that these costs cannot be spread across a large number of passenger seats as can be done with a larger aircraft.

Three commenters state that the requirement in § 91.205 (b)(11) for a pyrotechnic signaling device is understandable for general aviation aircraft, but is impractical and superfluous for airplanes operating under part 121 in scheduled air carrier service. The commenters recommend that § 91.205 be revised to exclude airplanes operating under part 121.

FAA Response: The FAA maintains that airplanes conducting extended overwater flights need to carry enough life rafts to accommodate all passengers in the event of the loss of the life raft with the largest rated capacity. Such a requirement will enhance safety in the event of an accident. Individual flotation devices are not adequate for safety in the event of a water ditching because passengers tend to separate in open water. A life raft enables passengers to stay together. An even greater threat is hypothermia, a sequence of physical reactions resulting from the loss of body heat. In cold water, a person will experience increased difficulty with mobility and intense shivering occurs. In arctic waterways, survival time can be as little as 2 or 3 minutes. Thus, a spare life raft is appropriate for affected commuters to enhance passenger safety. The requirement in part 121 for equipping each life raft with a pyrotechnic signaling device is identical to part 135 for extended overwater operations. The recommendation to except scheduled air carriers from the provisions of § 91.205(b)(11) is beyond the scope of this rulemaking. Moreover, under § 119.1(c) persons subject to part 119 must comply with other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by parts 119, 121, 125, or 135 of this chapter. Therefore, the final rule requires commuter airplanes to adhere to part 121 standards and provides deviation authority on a case by case basis.

Flotation devices. Section 121.340 requires that a large airplane in any overwater operation must be equipped with life preservers or with an approved flotation means for each occupant. Because it is practically impossible to operate any place without flying over a body of water of sufficient depth to require some sort of flotation means, § 121.340 has been applied so that virtually every airplane is equipped with either flotation cushions or life preservers. In parts 121 and 135, life preservers are required only for extended overwater operations, (§§ 121.339 and 135.167). Therefore, airplanes used in extended overwater operations are already equipped with life preservers and do not need to have flotation cushions.

The FAA proposed that airplanes equipped with 10 or more seats operating in scheduled passenger operations would comply with § 121.340 and accordingly proposed revising the section to delete the word ''large.'' To allow any replacement of seat cushions to be coordinated with the seat cushion flammability requirements of § 121.312(c), the FAA proposed a compliance date of 2 years after the publication date of the final rule.

Comments: The FAA received three comments that oppose the requirement for flotation devices. One commenter opposes the requirement because of the equipment cost and weight penalty. This commenter determines that the seat cushions in the METRO aircraft would not serve as effective flotation devices. The commenter provides a cost estimate for acquiring and retrofitting individual flotation devices for METRO airplanes. The commenter also states that each flotation device for 10 to 30 seat airplanes would have to be equipped with an approved survivor location light. A second commenter states that the rule should allow exemptions for operations that do not fly over or near large bodies of water. This commenter does not believe that flotation devices would enhance safety. Finally, a third commenter states that flotation devices are already required for extended overwater flights for all airplanes by § 91.205.

FAA Response: The FAA concurs that if the seat cushions in a particular airplane model do not serve as flotation devices, then individual flotation devices would have to be acquired. If life preservers are provided as individual flotation devices they would have to have an approved survivor locator light as required by § 121.339(a)(1).

The FAA found during previous rulemaking that all flights traverse a body of water of at least 6 feet deep during the course of a year. Therefore, individual flotation devices or life preservers for 10 to 30 seat airplanes are required on all flights. Section 121.340(b) contains provisions for requesting an approval to operate without the flotation means if the operator shows that the water over which the airplane is to be operated is not of such size and depth that life preservers or flotation devices would be needed for survival.

The FAA concurs with one of the commenters that § 91.205 requires flotation devices for all airplanes involved in extended overwater flights. Section 121.340 is clearly more restrictive.

Although the compliance date for meeting passenger seat cushion flammability requirements has been extended to 15 years, the compliance time of 2 years for providing flotation devices is the same as proposed.

Equipment for operations in icing conditions. Section 121.341 requires certain equipment for operations in icing conditions. The proposal would require affected operators to comply with this section. In accordance with § 121.341(b), to operate an airplane in icing conditions at night, a wing ice light must be provided or another means of determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. This would be a new requirement for 10- to 19-passenger seat airplanes.

No comments were received on this proposal; however, the FAA has determined that the requirements of § 135.227 (c), (e), and (f) need to be incorporated into § 121.341 to accommodate certain affected airplanes. These requirements pertain to operating limitations for flying into known icing

conditions if the airplane is not equipped for icing conditions. Thus the final rule § 121.341 incorporates the part 135 language.

Pitot heat indication system. Section 25.1326 requires a pitot heat indication system to indicate to the flightcrew when a pitot heating system is not operating. Part 23 currently requires pitot heat systems for airplanes approved for IFR flight or flight in icing conditions, but does not require pitot heat indicators. Section 121.342 currently requires a pitot heat indication system on all airplanes that have pitot heat systems installed.

In recommendation A–92–86, the National Transportation Safety Board (NTSB) recommended that small airplanes certificated to operate in icing conditions and at altitudes of 18,000 feet mean sea level and above should be modified to provide a pitot heat operating light similar to the light required by § 25.1326. As recommended by the NTSB, the FAA proposed to amend part 23 to require such indication for commuter category airplanes (Notice No. 94–21, 59 FR 37620, July 22, 1994). This new requirement, when adopted, will apply to new type certification and will not affect existing in-service commuter airplanes or future production of currently approved commuter airplanes.

In Notice 95–5, the FAA proposed to amend § 121.342 to require nontransport category airplanes type certificated after December 31, 1964, to incorporate pitot heat indication systems. Affected commuters would have to comply within 4 years after the publication date of this rulemaking.

Comments: Three comments were received on this proposal. Fairchild Aircraft Co., a manufacturer of commuter airplanes fully supports the proposal.

RAA notes that FAA's cost estimate of $500 was significantly lower than the commenter's estimate of between $1,500 and $25,000 per airplane. The commenter further states that there was no known history of accidents or incidents to justify the cost of retrofits and recommends that the requirement apply only to newly manufactured airplanes.

Commuter Air Technology, an aircraft modifier, notes that pitot tubes are accessible to ground personnel who could ascertain their proper function prior to flight. The commenter argues that because of the short duration of commuter flights (usually 1 hour) failure in flight would probably allow for continued flight to the next airport.

FAA Response: As a result of comments received in response to Notice 95–5, the FAA re-examined the cost estimates of this rulemaking. Those revised cost estimates, which are higher than those in the proposal, are included in the Regulation Evaluation Summary of this rulemaking.

The FAA disagrees with the commenter's contention that ground checks and short flights preclude the need for pitot tube heat indicators. Airspeed indicating errors caused by unheated pitot tubes have contributed to icing-related accidents. Airspeed indicating errors are not always obvious to the pilot who may make decisions based on the resulting erroneous information. A system which indicates when the pitot tube is, or is not, heated will provide the crew with the status of the system.

Therefore, the FAA is amending § 121.342, as proposed, to require nontransport category airplanes type certificated after December 31, 1964, that are equipped with a flight instrument pitot heating system to incorporate pitot heat indication systems within 4 years after the effective date of this rulemaking.

Flight data recorders (FDR's). Notice 95–5 did not propose any substantive revisions to current part 121 or part 135 flight data recorder (FDR) requirements. According to the proposal, affected commuters would continue to meet part 135 requirements while the FAA is developing updated FDR requirements for both parts 121 and 135.

Comments: One commenter states that some of the current equipment being used is providing inadequate records and that part 121 and 135 certificate holders should be required by December 31, 1999, to install new FDR on all airplanes. He further states that industry data indicates the changeover will cost $29 million divided by 454 million passengers a year, and that equates to 6 cents increase in ticket prices.

AIA and Raytheon state that following NTSB safety recommendations on FDR's could result in as large an impact on the economic viability for current and future aircraft in this category as the effects of Notice 95–5. They further state that although additional information from FDR's is needed, the safety recommendations as written would require 56 to 84 channels of data on a 1900D and would be excessive for most data requirements. This would result in a large redesign effort and related increases in costs.

American Eagle comments that it believes that this equipment, as well as cockpit voice recorders, is important in the post-incident investigation process and, as a result, has installed FDR's on all its aircraft even though not all aircraft operated under part 135 are required to have them. It strongly supports extending the current part 121 requirement to all aircraft with 10 or more seats operating in scheduled passenger service. In addition, the commenter supports regulations which would require such equipment to meet a new, higher minimum standard.

FAA Response: A recommendation for a rule change on FDR's is being addressed by the Aviation Rulemaking Advisory Committee (ARAC), and the concerns of the commenting parties will be reflected in that separate rulemaking if a rule change is proposed. This rulemaking did not propose any increase in channels for existing FDR's.

For clarification the proposed rule language has been revised in § 121.344 of the final rule to state that § 135.152 FDR requirements will apply to airplanes with a payload capacity of 7,500 pounds or less and a passenger seating configuration, excluding any pilot seat, of 10–30 seats. The proposed rule had not specified passenger seating capacity.

Radio equipment. Sections 121.345 through 121.351 cover radio equipment requirements. Part 121 specifies radio equipment requirements for operations under VFR over routes navigated by pilotage, for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top, and for extended overwater operations. The requirements are more specific and restrictive than those in § 135.161. The radio equipment requirements in part 121 are cumulative; that is, the regulations prescribe basic radio equipment requirements for VFR over routes navigated by pilotage and additional equipment for VFR over-the-top or IFR. Almost all part 121 operations are conducted under IFR. The proposed rule would require affected commuters to comply with part 121 radio equipment requirements.

The final rule revised § 121.349 (radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over the top) by adding a new paragraph (e) which incorporates requirements in § 135.165(a). This change is necessary because part 121 does not have comparable requirements.

Emergency equipment for operations over uninhabited terrain. Section 121.353 prescribes the emergency equipment needed for operations over uninhabited terrain for flag and supplemental operations. The requirements include pyrotechnic signaling devices, emergency locator transmitters (ELT's), and survival kits equipped for the route to be flown. The

proposed rule would require compliance with § 121.353.

Comments: Two commenters state that application of § 121.353 to affected commuters would provide relief from compliance with § 91.205, which would reduce the standards. One of these commenters claims that S-type ELT's as required by § 121.353 are useful for sea ditching but are of no use over uninhabited terrain. According to the commenter, they are intended for extended overwater operations, are immersion activated, are not intended for fixed installation on aircraft, lack any impact G-force activation feature, are very bulky, are extremely expensive, and, by design, are not suitable for surviving situations other than sea ditching. The commenter states that incapacitated survivors on uninhabited terrain cannot expect any help from an S-type ELT. The commenter recommends revising § 121.353 to state that the provisions are in lieu of part 91 provisions and that an airplane subject to part 121 must be equipped with an ELT or pyrotechnic signal device in accordance with § 121.353 or § 121.339 (extended overwater).

RAA also states that the requirement for pyrotechnic signaling devices is impractical for airplanes operating under part 121 and recommends that § 91.205(b)(11) be amended to exclude these certificate holders.

RAA and ASA point out that the requirement for ELT's in § 91.207 exempts turbojet-powered aircraft and aircraft engaged in scheduled flights by scheduled air carriers. RAA and ASA believe that all jet-powered airplanes that normally operate under part 121 whether or not they utilize propellers should be exempt from the requirements of § 91.207 during flight operations under part 91, such as ferry, training, testing, proving runs, which are incidental to or in support of scheduled operations. RAA and ASA recommend revising § 91.207(f)(1) to read: ''Large turbine powered airplanes.''

AACA indicates that the economic analysis did not include the weight penalties or costs for installing, maintaining, repairing, and training for the use of survival kits. AACA also states that the rule is unclear as to when the kits are required since ''uninhabited areas'' is not defined. AACA recommends clarifying the applicability of these requirements to Alaska. AACA, as well as other commenters, also states that there is an Alaskan state law requiring extensive survival equipment on board any aircraft operated in the State.

FAA Response: In response to the applicability to Alaska, although scheduled intrastate operations within the States of Alaska and Hawaii are currently conducted under flag rules, as a result of this final rule, these will now be domestic operations and the survival equipment requirements do not apply to domestic operations. The FAA did not intend to reduce requirements for operations over uninhabited terrain in Alaska or Hawaii as currently applicable. Therefore, the title of § 121.353 has been revised and an applicability statement added to include Alaska and Hawaii. Since these operators have been meeting flag requirements, this revision will not be a change for them.

The revisions requested to part 91 to exempt ferry flights and other types of flight incidental to scheduled flights is a separate issue from the requirements of § 121.353 which pertain only to emergency equipment for operations over uninhabited terrain. Any amendment to part 91 would need to be part of a separate rulemaking.

The FAA does not agree that the language of § 121.353 should be revised to clarify that it replaces the requirements for pyrotechnic signaling devices in § 91.205(b)(11) pertaining to aircraft for hire operated over water beyond power off gliding distance to shore. The proposed applicability of § 121.353 to affected commuters if they fly a supplemental or flag operation does not affect the applicability of part 91 requirements. The requirements of § 91.205(b)(11) would continue to apply under applicable circumstances. Part 121 requirements are in addition to part 91, not in lieu of part 91.

The FAA does not agree with the commenter's claim that survival-type ELT's do not work except in water ditchings. It is true that S-type ELT's must meet certain buoyancy, waterproofness, and immersion in salt water requirements. While many S-type ELT's employ water-activated batteries, they are not required. Regardless of the type of battery used, each ELT must have a means by which it can be activated manually.

In addition, this rulemaking does not define ''uninhabited terrain.'' When the predecessor regulation to § 121.353 was proposed in CAB draft release 58–24 in 1960, ''uninhabited terrain'' was defined as ''flights for long distances over frigid or tropical land areas for which the Director finds such equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over.'' When the rule was adopted, the wording was changed to provide the Administrator more flexibility in identifying uninhabited areas. Since implementation is on a case-by-case basis through operations specifications, it was determined that the proposed wording was not necessary. This provision has been in effect for over 30 years without any problem about the meaning of ''uninhabited areas.''

Airborne weather radar. The proposed rule would require all affected commuters to have airborne weather radar in accordance with § 121.357. Currently, part 135 requires weather radar for 20–30 passenger seat airplanes and weather radar equipment or approved thunderstorm detection equipment for 10–19 passenger airplanes.

Comments: Three comments were received on the proposal. RAA and AMR Eagle support the proposed requirement. AMR Eagle states that commuter operations are typically characterized by high frequency operations at lower altitudes with short stage lengths which necessarily limits preplanning, planning, or executing a desired deviation in flight profile because of changing weather. Hence a flightcrew needs all available tools to conduct safe operations.

One commenter states that airborne weather radar is not needed in Alaska because severe thunderstorms and tornadoes do not occur there.

AACA claims that Notice 95–5 is silent about the exceptions for operations within the states of Alaska and Hawaii and within parts of Canada. AACA requests that the FAA specifically address the issue that airborne weather radar and airborne thunderstorm detection equipment will not be required for operations previously excepted under part 121 and part 135 (§§ 121.357(d) and 135.173(e)). According to the commenter, there have been no meteorological changes in Alaska since the regulation was originally written; therefore, this equipment is no more necessary now than it ever was.

FAA Response: The FAA agrees with AACA that, in accordance with § 121.357(d), airborne weather radar is not required for airplanes used solely within the State of Hawaii or the State of Alaska or that part of Canada west of longitude 130 degrees W, between latitude 70 degrees N and latitude 53 degrees N, or during any training, test, or ferry flight. This exception is retained in the final rule. In Notice 95–5 the FAA did not propose to delete the § 121.357(d) exception.

All other affected operators would have to have airborne weather radar within the 15-month compliance period.

Traffic Alert and Collision Avoidance System (TCAS). Under the proposal,

affected carriers would be required to comply with part 121 TCAS requirements in § 121.356. There are no substantive differences between part 121 and part 135 TCAS requirements for aircraft with passenger seating configurations of 10–30 seats.

Comments: Fairchild Aircraft recommends that the words, ''combination cargo'' be deleted from § 121.356(b).

ALPA says that the FAA should require TCAS II for aircraft with fewer than 30 passenger seats, including cargo aircraft (which have increased in recent years).

RAA recommends revising § 121.356(a) to require that ''* * * each certificate holder shall equip its airplanes with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder. * * *''

Two certificate holders, Samoa Air and Inter Island Air, say that TCAS is expensive and useless for their operating environment, i.e., airspace with little air traffic.

Fairchild Aircraft states that § 121.345(c)(2), which requires Mode S transponders, is similar to a requirement in part 135 (§ 135.143(c)(2)). According to the commenter, the Mode S equipment has not been installed and the commenter believes that the FAA is granting exemptions to the requirement for part 135 certificate holders. If exemptions would not be granted under part 121, significant cost would be involved.

FAA Response: The intent of the proposed rule § 121.356 was that airplanes with a passenger seating configuration of 10 to 30 seats must be equipped with at least a TCAS I system which is the same as the present part 135 requirement for the affected airplanes. TCAS I systems are not required to be equipped with Mode S transponders.

As a commenter states, unrelated to TCAS I requirements, exemptions to the Mode S requirements of part 135 are currently in effect. Any affected commuters who hold an exemption from the part 135 requirement or from § 135.143, Mode S requirements, after this final rule must reapply to be exempted from the Mode S requirements of part 121.345.

The commenter's recommendation to require TCAS for all-cargo operations is beyond the scope of this rulemaking, as are the recommendations to require TCAS II for all airplanes and to exempt certain affected certificate holders from the requirement for certificate holders to have TCAS I by December 1995.

Low-altitude windshear systems. Section 121.358 requires an approved airborne windshear warning system for most turbine powered airplanes. It specifically excludes turbopropeller-powered airplanes. No comments were received concerning this section and the final rule is adopted as proposed. Comments received on windshear training requirements are discussed under subpart N.

Cockpit voice recorders. No comments were received on this issue; however, the FAA is making a change in the final rule language to correctly incorporate the current CVR requirements that apply to airplanes with 10–30 passenger seats.

Ground proximity warning system (GPWS). Under the proposed rule, affected commuters would have to comply with the GPWS requirements of § 121.360. By the compliance date of this rulemaking, all part 135 operators of turbine powered airplanes having a passenger seating configuration of 10 or more seats would have to have GPWS. All affected commuters are included in this requirement. The GPWS required under part 135 would meet the standards of part 121.

No comments were received on this issue; however, the FAA has discovered that the word ''large'' was not deleted from § 121.360. This deletion is necessary if the requirements are to apply to all affected commuters. Accordingly the word ''large'' is deleted in the final rule.

VI.A.8. Subpart L—Maintenance, Preventive Maintenance, and Alterations

Applicability. Part 121 certificate holders are required to adopt a continuous airworthiness maintenance program (CAMP), which has a proven track record for large transport category airplanes. Under § 135.411(a)(2), airplanes that are type certificated for a passenger-seating configuration of 10 seats or more are already required to comply with a CAMP similar to part 121 requirements. The proposed rule would require all airplanes type certificated for 10 or more passengers to comply with part 121 CAMP requirements. These requirements are consistent with present-day maintenance standards and techniques to manage airplane airworthiness. The proposal to include affected commuters under part 121 maintenance requirements would not necessitate a revision to § 121.361.

Section 121.361(b) contains a deviation provision allowing certain foreign noncertificated persons to perform maintenance. Affected commuters would now have this option available. Since many of the airplanes that are the subject of this rulemaking are manufactured outside the United States, this deviation provision would allow certificate holders to have the original equipment manufacturers perform some overhauls and repairs.

Comments: Jetstream Aircraft Limited supports the proposals to apply this subpart to affected commuters.

American Eagle encourages proposed rulemaking which would mirror current parts 121 and 25 maintenance and inspection requirements for aircraft certificated under part 23 or SFAR 41 and used in commercial aviation of any type.

FAA Response: Since the comments in effect support the proposed rule changes, they are adopted as proposed.

Responsibility for airworthiness. Section 121.363 places the responsibility for airworthiness of an airplane on the certificate holder; § 135.413 contains a similar requirement. Under the proposal, affected commuters must comply with § 121.363. Section 135.413(a) requires a part 135 operator to have defects repaired between required maintenance under part 43. This provision does not appear in part 121. Part 121 operators are required to have defects repaired in accordance with their maintenance manual. Since an FAA-approved maintenance manual requires no less than the part 43 requirements, affected commuters would experience no change in requirements under the proposal. On this issue, no comments were received and the final rule is adopted as proposed.

Maintenance and preventive maintenance, and alteration organization. Section 121.365 requires the certificate holder to have an adequate maintenance organization for the accomplishment of maintenance, preventive maintenance, and alterations on its airplanes. The provision allows the certificate holder to arrange with another person to accomplish the work, provided that the certificate holder determines that the person has an organization adequate to perform the work. This provision requires separate inspection functions to ensure that those items directly affecting the safety of flight are verified to be correct by someone other than the person who performed the work.

The FAA recognizes that other provisions of the proposed rule in Notice 95–5, which would require affected certificate holders to install new equipment and might lead to replacement of part 23 type certificated airplanes with part 25 type certificated airplanes, could necessitate that maintenance personnel (as required by

this section and by §§ 121.367 and 121.371) have additional skills and training.

Comments: American Eagle supports the proposal.

FAA Response: Since the only comment on this issue is supportive, the rule is adopted as proposed.

Manual requirements. Sections 121.369 and 135.427 have almost identical requirements specifying that the certificate holder include in its manual a description of the organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any required inspections, other maintenance, preventive maintenance, or alterations. The manual must contain the programs required by § 121.367, including the methods of performing required inspections, other maintenance, preventive maintenance, or alterations. This manual is necessary to ensure that the certificate holder has provided an adequate maintenance program for the airworthiness of its airplanes and to inform its personnel, or other persons who perform maintenance, of their responsibilities regarding the performance of maintenance on the airplane. In the proposal, the FAA required affected commuters to comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Required inspection personnel. Sections 121.371 and 135.429 contain similar requirements for inspection personnel, including provisions for specific qualifications for and supervision of an inspection unit. Included is a requirement for listing names and appropriate information of persons who have been trained, qualified, and authorized to conduct required inspections. This requirement ensures that competent and properly trained inspection personnel are authorized to perform the required inspections. In Notice 95–5, the FAA required affected commuters to comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Continuing analysis and surveillance. Section 121.373 on continuing analysis and surveillance is almost identical to the provisions of § 135.431. The FAA proposed that affected commuters comply with § 121.373. Section 121.373 provides for: the establishment by the certificate holder of a system to continually analyze the performance and effectiveness of the programs covering maintenance, preventive maintenance, and alterations; the correction of any deficiencies in those programs; and the requirement by the Administrator that the certificate holder make changes in either or both of its programs if those programs do not contain adequate procedures and standards to meet the requirements of this part. No comments were received on this issue and the final rule is adopted as proposed.

Maintenance and preventative maintenance training programs. Sections 121.375 and 135.433 contain identical requirements prescribing training programs that ensure that persons performing maintenance or preventive maintenance functions (including inspection personnel) are fully informed about procedures, techniques, and new equipment in use and that those personnel are competent to perform their required duties. The FAA proposed that operators comply with part 121. On this issue, no comments were received and the final rule is adopted as proposed.

Maintenance and preventive maintenance personnel duty time limitations. Section 121.377 establishes the requirements for maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any calendar month. This requirement is for maintenance personnel within the United States. This provision would be a new requirement for affected commuters.

Comments: AACA states that most Alaskan certificate holders utilize mixed fleets ranging from under 9 passenger seats, 10–19 seats, and more than 20 seats. These carriers frequently employ maintenance personnel who are qualified to work on all the aircraft in a particular certificate holder's fleet, regardless of the aircraft's seating capacity. If the rule is adopted as proposed, these certificate holders will have to schedule maintenance personnel according to part 121 standards to avoid inadvertently violating the maintenance personnel duty time limitations. At locations with limited maintenance personnel and mixed fleets of 1-to-9, and 10-to-29 seat aircraft, this new requirement would place an additional administrative scheduling burden and financial compliance cost on the air carrier. Alternatively, an air carrier might have to develop and apply two separate work schedules for mechanics, one for part 121 mechanics and aircraft and another for part 135 mechanics and aircraft. AACA states that the FAA's economic analysis failed to address any cost impacts of this requirement. AACA also asks for guidance for those operators who employ maintenance personnel that might work under both part 121 and part 135.

FAA Response: The existing rule requires only 24 consecutive hours off during any 7 consecutive days. While it may have been possible to work mechanics under part 135 7 days a week, without rest, the FAA believes that the combination of union work rules, Department of Labor regulations, and general practice of a day of rest each week would, in effect, accomplish the same result as the rule.

Mechanics must receive adequate rest in order to properly perform their duties. Prescribing a minimum standard will ensure that some rest is provided. It would be inconsistent to require rest for the pilots and flight attendants but not for the people responsible for maintaining the airplane. The FAA believes that the burden of scheduling and providing a day of rest would be minimal. Standard time cards, a common practice, could be used to show compliance.

No FAA regulation prevents a mechanic from working for both a part 121 and a part 135 employer when the mechanic is qualified and, when working on airplanes operated under part 121, the certificate holder meets the regulatory requirements of part 121 for time free from duty.

It should also be noted that the rule allows flexibility by requiring that a certificate holder shall relieve each person performing maintenance or preventive maintenance from duty for at least 24 consecutive hours during any 7 consecutive days, ''or the equivalent thereof within any calendar month.''

The final rule is adopted as proposed.

Certificate Requirements. Sections 121.378 and 135.435 contain identical requirements specifying that each person, other than a repair station certificated under the provisions of subpart C of part 145, who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections, hold an appropriate airman certificate. The FAA proposed that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Authority to perform and approve maintenance, preventative maintenance, and alterations. Sections 121.379 and 135.437 contain similar requirements allowing certificate holders to perform or make arrangements with other persons to perform maintenance, preventive maintenance, and alterations as provided in its continuous airworthiness maintenance program and

its manual. In addition, a certificate holder may perform these functions for another certificate holder. The rules require that all major repairs and alterations must have been accomplished with data approved by the Administrator. The FAA proposed that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Maintenance recording requirements. Section 121.380 provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. The rule also specifies the length of time that the records must be retained and requires that the records be transferred with the airplane at the time it is sold. A small change was proposed to § 121.380(a)(2) to accommodate propeller-driven airplanes used by some affected commuters and to § 121.380(a)(2)(v) to adopt the language found in § 135.439(a)(2)(v) to provide more complete records on airworthiness directive compliance.

Comments: Zantop International Airlines, Inc. (a current part 121 certificate holder) objects to the proposed change to § 121.380(a)(2)(i) that would add engine and propeller total time in service to the list of items that must be recorded. Zantop says that the engine and propeller requirement is new for them and that the aircraft (airframe) total hours in service is the only time transferred on many of its older aircraft. The new requirement would result in searching maintenance records to determine the historical time on the engine and propeller. In some cases this information may not be available. Zantop recommends that an exemption be provided for older aircraft or that these records only be required for future certifications.

FAA Response: Although current § 121.380(a)(2)(i) does not specifically call for total time in-service records of engines or propellers, it does require a record of life-limited parts for these components. The only way to accomplish this is by keeping records for total time in service. Total time in service records may consist of aircraft maintenance record pages, separate component cards or pages, a computer list, or other methods as described in the applicant's manual.

Tracing a life-limited part back to its origin would be required only in those situations where the certificate holder's records are so incomplete that an accurate determination of the time elapsed on the life-limited part could not be made.

The part 135 certificate holders moving to part 121 will have no impact from this rule, since they are already tracking airframe, engine, and propeller time under § 135.439(a)(2)(i).

The airframe, engine, and propeller information is helpful in tracking airworthiness directive compliance and life limits for life-limited parts. It also standardizes language between part 135 and part 121. The FAA believes that at least some of the current part 121 certificate holders have the information in existing required records in order to show compliance with life-limited components. However, the FAA has decided to allow current part 121 operators some time to come into compliance with the requirements for recording total time for engines and propellers. The final rule for § 121.380 has been revised accordingly.

Transfer of maintenance records. Section 121.380a requires the certificate holder to transfer certain maintenance records to the purchaser at the time of the sale, either in plain language form or in coded form. This section is worded the same as § 135.441 except that the part 121 provision allows the purchaser to select the format of the transferred records. Notice 95–5 specified that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

VI.A.9. Subpart M—Airman and Crewmember Requirements

Flight attendant complement. Section 121.391 requires one flight attendant for airplanes having a seating capacity of more than 9 but less than 51 passengers. Section 135.107 requires one flight attendant for airplanes having a passenger seating configuration, excluding any pilot seat, of more than 19 passengers. The FAA retained the requirement for a flight attendant for more than 9 passengers for current part 121 airplanes and proposed to amend the section to require a flight attendant for affected commuters only in airplanes with more than 19 passenger seats. No comments were received on this issue and the final rule is adopted as proposed.

Flight attendants being seated during movement on the surface. Section 121.391(d) states that during movement on the surface, flight attendants must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants. Part 135 has a similar provision in § 135.128(a), except that it does not specify that flight attendants may be performing safety duties during movement on the surface. The FAA proposed that affected commuters comply with part 121. On this issue, no comments were received and the final rule is adopted as proposed.

Flight attendants or other qualified personnel at the gate. The FAA proposed that all airplanes being operated by affected commuters be required to comply with current § 121.391(e); that is, they must have a flight attendant or substitute (such as a flight crewmember or trained gate agent) on board when the airplane is parked at the gate and passengers are on board. The substitutes must be given training in the emergency evacuation procedures for that airplane as required by § 121.417 and they must be identified to the passengers. If there is only one flight attendant or other qualified person on board the airplane, that person must be located in accordance with the certificate holder's FAA-approved operating procedures.

As a result of the proposed rule, § 121.391(e) applies in the future to some operations that do not require flight attendants. Therefore, the FAA proposed to move § 121.391(e) to a new separate section, proposed § 121.393, to highlight the crewmember requirements that apply when an airplane is on the ground and passengers remain on board before continuing to another destination.

Comments: AACA opposes the requirement for flight attendants at the gate. The commenter states that it would be impossible for one of the two crewmembers on the 10-to-19 seat airplanes to stay on board with passengers while parked at the gate. Both crewmembers would be needed to assist in the loading and unloading process. Furthermore, the commenter states that deplaning passengers would not be a viable option because airports do not have the proper facilities. Most airplanes are not met by a gate agent in rural Alaska airports, and airplanes do not pull up to a terminal. Therefore, the commenter states that a trained substitute would have to stay on board the airplane with the passengers while parked at the gate 100% of the time. The commenter states that the FAA has underestimated the training costs and wage costs for the option of using a substitute. The commenter estimates that this requirement would cost about $2.9 million (costs not broken down) each year for all of the Alaskan commuter air carriers to comply.

FAA Response: While many of the affected airplanes are operated seasonally and do not fly in the winter, some operate during extreme weather conditions into airports that do not have

terminals to use for deplaning. To the extent possible the FAA would like a flight attendant or pilot on board whenever passengers are on board. Since the affected 10- to 19-passenger-seat airplanes do not require a flight attendant, it would be inconsistent to require one only during ground operations. However, each of the affected commuter airplanes require two pilots for their operations. One can stay on board while the other does any necessary work off the airplane. Other options are to deplane the passengers or use a trained substitute.

The FAA recognizes that part 121 was written with the expectation that flight attendants would be available and that pilots would not be loading baggage or performing other duties outside the airplane. Therefore, the FAA is revising § 121.393 for airplanes for which a flight attendant is not required to allow a crewmember or qualified person to be on board or near the airplane. If the crewmember or qualified person is not on board the crewmember or qualified person must be near the airplane and in a position to adequately monitor passenger safety. Airplane engines must be shut down and at least one floor level exit must remain open to provide for the deplaning of passengers. This amendment is consistent with current FAA policy for refueling with passengers on board. The FAA has determined that this option is functionally equivalent to having a qualified person on board since these airplanes are small enough to monitor passenger compartments from outside the airplane.

VI.A.10. Subparts N and O—Training Program and Crewmember Qualifications

Subpart N, Training. As the discussion earlier in this preamble points out, the issue of training has been the subject of separate rulemaking. However, several comments were received on training requirements.

Comments: AIA states that Notice 95–5 is virtually silent on training; however, this is an important part of the total picture. AIA states that the separate initiative on training should be reviewed in conjunction with this NPRM.

Raytheon echoes AIA's comments on training, and adds that successful implementation of the training actions would be expected to have a dramatic impact on future accident statistics. Training should be the principal focus for safety improvement together with future programs for safety system monitoring. Raytheon also states that while NPRM 95–5 was not intended to cover training, Notice 95–5 probably would not have been proposed if training were more effective.

Air Vegas comments that all additional flight training would have to be done in the aircraft because there is no Beech 99 simulator in existence. This would increase the hours for initial and transition training and nearly double training costs.

Fairchild Aircraft says that, under §§ 121.424 and 121.427 as well as part 121 Appendix E, windshear training must be performed in a simulator and that such simulators are not likely to be available to many commuter airline operators. This commenter adds that there is no evidence that the part 135 windshear program is inadequate.

Fairchild Aircraft recommends that §§ 121.424 and 121.427, as well as Appendix E, be amended to provide relief from windshear simulator training for certificate holders of turbopropeller airplanes with 30 or fewer passenger seats. An individual commenter recommends that low-altitude windshear training be made a part of both ground and flight (simulator) training under part 135. This commenter says that, currently, commuter aircraft are not equipped to receive advance warning of low-level windshear and that training would help pilots to better deal with such occurrences. ALPA proposes that § 121.400(b) be amended by adding a group specific to propeller-driven aircraft with a seating capacity between 10 and 30 seats. This will ensure that personnel, particularly dispatchers and meteorologists, understand and appreciate the working environment of these aircraft, including the facilities and capabilities associated with weather, airports, maintenance, and logistics, etc.

An individual commenter supports increased commuter training for several reasons: Most accidents are related to human (not equipment) error, there is a need for more simulator training among commuters, and part 135 aircrews must deal with a high number of regional landings and takeoffs as well as varied weather conditions.

Jetstream Aircraft Limited and American Eagle support the proposed rulemaking to strengthen part 135 crewmember training.

FAA Response: The comments on appropriate training requirements, while generally supportive of the FAA's goals in this rulemaking, are actually more relevant to the separate rulemaking addressed in Section III.E, Related FAA Action. The windshear simulator training requirements only affect turbine powered airplanes (turbojets) on which windshear equipment is required by § 121.358.

Subpart O, Crewmember Qualifications. Because of the separate rulemaking previously discussed, the FAA did not propose any changes to subpart O except for the removal of an obsolete section (§ 121.435). Nonetheless, a number of comments were received.

Comments: RAA, ASA, Gulfstream, United Express, Big Sky Airlines, and an individual oppose the requirement that currently qualified first officers performing the duties of second in command obtain initial operating experience (IOE) under § 121.434. However, these commenters do support an IOE requirement for newly designated first officers and new hires. United Express recommends that air carrier proving runs be used for operations evaluation and that if, during the proving runs, an airline does not meet performance criteria, operations should terminate until a satisfactory fix is established.

American Eagle supports IOE requirements for all first officers and believes that the additional costs associated with such a requirement are worth it to ensure that these pilots are fully qualified.

RAA, ASA, and Gulfstream believe that a basis and criteria for ''grandfathering'' these current and qualified seconds in command can be the training records of each of these airmen as well as the flight records documenting their experience as first officers.

An individual commenter says that a precedent for grandfathering these pilots is the ''N & O'' exemptions held by certain 135 certificate holders which allows training under part 121 but does not require repetition of unique part 121 IOE for crews which have been conducting scheduled operations under part 135.

Fairchild Aviation recommends that § 121.437(a) be amended to recognize the fact that not all 10–19 passenger airplanes are large airplanes. This commenter says that this section should be changed to read, ''* * * and, *if required,* an appropriate type rating for that aircraft.''

FAA Response: The comments on appropriate crewmember qualification requirements are actually more relevant to the separate rulemakings addressed in Section III.E, Recent FAA Actions. The concerns raised by these commenters have been considered in those rulemaking actions.

VI.A.11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Operations

Requirements for dispatch systems and aircraft dispatcher qualifications are discussed in Section V.F., Dispatch system.

VI.A.12. Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations

Requirements for flight time limits and rest requirements are discussed in Section V.D., Flight time limits and rest requirements.

VI.A.13. Subpart T—Flight Operations

Operational control. Sections 121.533 and 121.535 require each domestic and flag operation to be responsible for operational control and specify the responsibilities for aircraft dispatchers and pilots for each flight release. No comments were received on these sections and the final rule is adopted as proposed; however, related comments on dispatch system requirements are discussed in Section V.F., Dispatch system.

Admission to flight deck. Section 121.547 specifies who may be admitted to the flight deck of a passenger-carrying airplane. The part 121 section is similar to § 135.75 but provides for additional types of persons who may be admitted. FAA proposed that affected commuters comply with part 121. No comments were received concerning this section and the final rule is adopted as proposed.

Flying equipment. Section 121.549(b) requires that each crewmember shall, on each flight, have readily available for his or her use, a flashlight that is in good working order. This is a new requirement for 10- to 30-passenger seat airplanes for co-pilots that was not specifically discussed in Notice No. 95–5. No comments were received and the final rule remains as proposed.

Emergency procedures. Parts 121 and 135 require that, when the certificate holder or PIC knows of conditions that are a hazard to safe operations, the operation must be restricted or suspended until the hazardous conditions are corrected. For a discussion of this issue, see ''Emergency Operations (Proposed §§ 119.57 and 119.58)'' later in this preamble.

Briefing passengers before takeoff. The FAA proposed to amend § 121.571(a) to bring over from § 135.117 requirements for additional passenger information for airplanes with no flight attendant. This additional information includes instructions on location of survival equipment, normal and emergency use of oxygen equipment for flights above 12,000 MSL, location and operation of fire extinguishers, and placement of seat backs in an upright position for takeoffs and landings. The FAA proposed that the affected commuters otherwise comply with the part 121 rules on passenger information. The printed cards would need to be revised or supplemented to provide information on flotation cushions or other required flotation devices once these devices are installed.

A small change was proposed for § 121.571(a)(3) to allow a flight crewmember (instead of a flight attendant) to provide an individual briefing of a person who may need assistance in the event of an emergency, in cases where an airplane does not have a flight attendant.

Comments: AACA disagrees with the FAA's cost estimate for the required passenger information cards and briefings. The commenter states that the FAA's cost estimate appears to be low. Alaskan air carriers would need to devise a more comprehensive information system due to the many nationalities and native languages in Alaska. Many local passengers are not native speakers of English or are not fluent in its comprehension. Briefing cards must be painstakingly translated into many Alaskan Native languages at great expense. Some air carriers have also had to translate into Japanese, Korean, and Russian for tourists from the Pacific Rim nations. Based on experience, the commenter states that the FAA's assumption of a 3-year life expectancy for information cards is high and that information cards normally last less than a year due to wear and theft. The commenter also estimates costs of $26,000 for Alaskan commuter air carriers in the first year and $4,224 each year thereafter to meet the requirement.

FAA Response: While the FAA recognizes the benefits of translating passenger information on briefing information, this has never been a requirement but an option undertaken by the operator to improve service and safety.

The 3-year life expectancy of briefing cards is based on past experience. There is nothing unique to Alaska that would warrant a deteriorated state sooner than within 3 years.

Part 135 10- to 19-seat airplane briefing card requirements are being incorporated into part 121. New cards need not be revised immediately and normal wear cycles prevail so that this rule would not impose additional costs.

Oxygen for medical use by passengers. Section 121.574 provides that a certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen if, among other requirements, the equipment is furnished by the certificate holder. The proposal would require affected certificate holders to comply with § 121.574.

Under current § 135.91, the certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen provided certain requirements are met. Section 135.91(d) contains a provision for permitting a noncomplying oxygen bottle provided by medical emergency service personnel to be carried on board the airplane under certain circumstances; this provision was not proposed to be carried forward into part 121.

Comments: AACA states that many medevac operations take place on board scheduled and on-demand flights. Without aviation oxygen available at village health clinics, the flexibility of § 135.91(d) would be lost if it is not carried forward into part 121. AACA recommends allowing a noncomplying oxygen bottle on aircraft operating solely within the State of Alaska. To prohibit this will mean medevac costs will increase and patient transports will have to be done on board charter flights that can originate from a hub point where medical oxygen and stretcher units can be installed on the airplane.

FAA Response: The FAA does not find it necessary to move the language of § 135.91 to § 121.574. The FAA has issued exemptions on this requirement to part 121 certificate holders operating in Alaska.

Alcoholic beverages. Sections 121.575 and 135.121 contain requirements controlling the serving and consumption of alcoholic beverages on the airplane. The requirements are similar except for three minor additional requirements in § 121.575. The FAA proposed that affected commuters comply with the requirements of § 121.575 and since no comments were received on this issue, the final rule is adopted as proposed.

Retention of items of mass. Section 121.576 requires that certificate holders must provide and use a means to prevent each item of galley equipment and each serving cart, when not in use, and each item of crew baggage, which is carried in the crew or passenger compartment, from becoming a hazard. Section 121.577 prohibits a certificate holder from moving an airplane on the surface or taking off unless such items are secure. Sections 135.87 and 135.122 require certificate holders to ensure that

such items are secure before takeoff. The FAA proposed that the affected commuters comply with § 121.577, which is substantively the same as § 135.122. No comments were received on this issue and the final rule is adopted as proposed.

Cabin ozone concentration. Section 121.578 sets maximum levels of ozone concentration inside the cabins of transport category airplanes operating above 27,000 feet. The affected commuters do not generally operate at these altitudes. The FAA believes that these rules should apply whenever the altitudes are exceeded. The FAA proposed to amend § 121.578(b) to delete the reference to transport category airplanes.

Comments: Commuter Air Technology states that it does not operate above 25,000 feet. The commenter asks if operation in part 135 now requires ozone monitors and if part 91 flights of 10 or more passengers operated above 27,000 require ozone monitors.

FAA Response: For operations at or below 27,000 feet the ozone requirements do not apply. The answer to both questions of the commenter is no. Part 91 and part 135 do not have ozone provisions. The final rule is the same as proposed.

Minimum altitudes for use of autopilot. Sections 121.579 and 135.93 establish minimum altitudes for use of autopilots. The two sections are similar; however, part 135 does not specify weather requirements for an approach. In a recent NPRM proposing to revise the minimum altitude for use of an autopilot (59 FR 63868, December 9, 1994), which is under consideration, the minimum altitude for autopilot use corresponds to that designated in the type design of the autopilot and stated in the Airplane Flight Manual (AFM). If the rule is adopted as proposed, the AFM would establish guidance that would be edited and approved in the air carrier's operations specifications.

Comments: Commuter Air Technology comments that it has aircraft without autopilots and questions how the rule would affect those aircraft.

AACA states that an NPRM published on December 9, 1994, will require the AFM to establish guidance that would be edited and approved in the affected air carrier's operations specifications.

FAA Response: If the airplane does not have an autopilot, § 121.579 does not apply.

Section 135.93 is similar to § 121.579; however, there are differences that would necessitate manual and training changes regarding the use of the autopilot.

The above mentioned proposal includes the recommendations of the Aviation Rulemaking Advisory Committee (ARAC). The FAA has proposed in that rulemaking that instead of the 500 ft. minimum stated in the regulations, the autopilot could be engaged at whatever the airplane flight manual says it is capable of (200 ft., 100 ft., etc.). Comments were favorable. If adopted, the results of that separate rule will apply to the affected commuters.

Observer's seat. Section 121.581 requires a certificate holder to make available a seat on the flight deck of each airplane for use by the Administrator while conducting routine inspections. Comparable § 135.75 requires, for inspections, a forward observer's seat on the flight deck or a forward passenger seat with headset or speaker. Because airplanes in the 10- to 30-seat range may not have an observer's seat on the flight deck, the FAA proposed to move the option of providing a forward passenger seat into part 121 and require compliance with part 121 for affected commuter operators. No comments were received regarding this issue and the final rule is adopted as proposed.

Authority to refuse transportation. Section 121.586 prohibits a certificate holder from refusing transportation to a passenger on the basis that the passenger will need the assistance of another person to move quickly to an exit in the event of an emergency unless the certificate holder has established procedures for the carriage of such passengers and the passenger either fails to comply or cannot be carried in accordance with the procedures.

Comments: Commuter Air Technology states that their aircraft has no place for a wheelchair and that the seat opposite the main cabin door has increased pitch which normally accommodates individuals with movement restrictions.

FAA Response: In response to the specific comment, if a certificate holder has no room on board an airplane to handle a wheelchair as carry-on baggage, the wheelchair may be checked as cargo baggage.

The Air Carrier Access Act is implemented in 14 CFR part 382. Aircraft accessibility requirements found in § 382.21 generally exempt aircraft operated under part 121 with fewer than 30 passengers and aircraft operated under part 135. The rule requires that these aircraft comply ''to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.''

The FAA anticipates that affected commuters will establish procedures in accordance with § 121.586. These procedures must be developed in accordance with § 382.21. Since operators under parts 121 and 135 are already in compliance with § 382.21, this rulemaking poses no new requirements other than establishing procedures for the carriage of passengers who may need special assistance in an emergency.

Carry-on baggage: The FAA proposed that the affected commuters comply with the § 121.589 carry-on baggage rule. This would require the preparation and approval of a carry-on baggage program.

Comments: Commuter Air Technology states that its aircraft have no carry-on baggage storage other than for a standard briefcase under the seat. According to the commenter, carry-on baggage is removed from passengers and placed in the pod upon entry. The interior is also placarded to require adequate securing of any interior cargo. AACA is concerned about the cost of a baggage scanning program.

FAA Response: Even if the aircraft allows only limited carry-on baggage, the certificate holder must still have a carry-on baggage program that complies with § 121.589. Interior cargo must be secured in accordance with § 121.285. (See discussion of § 121.285, Carriage of cargo in passenger compartments in this notice.) The final rule revises references in accordance with other changes in this rulemaking. Although affected operators must develop a program for their approved manuals, compliance will not result in any significant substantive operational burden.

Use of certificated airports. For a discussion of the issue of airports certificated under part 139, see Section V.H., Airports.

VI.A.14. Subpart U—Dispatching and Flight Release Rules

Flight release authority. Section 121.597, which applies to supplemental operations, requires a flight release signed by the pilot in command when the pilot and the person authorized by the certificate holder to exercise operational control believe that the flight can be made safely. Under part 135 releases are not required for either scheduled or on-demand flights. The FAA proposed requiring compliance with part 121. This requirement would apply to affected commuter airplanes when those airplanes are used in nonscheduled service with a passenger-seating configuration of 10 or more. No

comments were received on this issue and the final rule is adopted as proposed.

Dispatch or flight release under VFR. Section 121.611 states that no person may dispatch or release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport.

Comments: One commenter states that VFR is certainly an acceptable standard for sightseeing operations or for smaller carriers. Scenic Air states that airplanes typically used in the tour business can only operate day VFR. Grand Canyon Airways said 99 percent of its flights are VFR.

An individual states that the proposal on § 121.611 concerning VFR dispatch is unclear as to whether part 135 certificate holders will be required to comply. The commenter believes they should be covered by § 121.611 because it is the safe way and costs nothing.

FAA Response: In the final rule, affected commuters are required to comply with § 121.611. The FAA will develop additional operations specifications paragraphs and guidance for VFR tour operations, remote area operations (e.g. Samoa, Alaska) or other operations that are not capable of being conducted under IFR because they have no airways, IFR approaches, navaids, etc.

Alternate airport for departure. Section 121.617(a) requires an alternate departure airport during certain weather conditions and specifies that for aircraft having two engines the alternate airport must be not more than one hour from the departure airport at normal cruising speed in still air with one engine inoperative. Under the proposed rule, affected commuters would have to comply with the requirement. This requirement was not specifically discussed in the proposed rule.

Comments: Fairchild Aircraft comments that this requirement requires single-engine cruising speed data that are unlikely to be included in the FAA-approved airplane flight manual of 10–19 passenger airplanes. Comparable § 135.217 requires an alternate airport ''within 1 hour's flying time (at normal cruising speed) in still air.'' The commenter requests that the part 135 wording be inserted in the part 121 section.

FAA Response: Fairchild is correct, but the FAA is retaining the requirement and it will be necessary for affected commuters to work with airplane manufacturers to develop appropriate data for normal one-engine inoperative cruising speed for the airplane flight manual within 15 months. (See also Section VI.A.4 Airplane limitations: Type of route for discussion of one engine inoperative data).

Operations in icing conditions. No comments were received on this proposal and the final rule is adopted as proposed. (See also VI.A.7. Equipment for operations in icing conditions).

Fuel reserves. Sections 121.639, 121.641, 121.643, and 121.645 contain fuel reserve requirements based on the type of operation to be conducted. These fuel reserve requirements do not distinguish between VFR and IFR operations. Section 121.639 requires 45 minutes of fuel reserve for domestic air carriers and for certain other air carrier operations.

Section 135.209 requires 30 minutes of fuel reserve for day VFR conditions and 45 minutes for night VFR conditions. Section 135.223 requires 45 minutes for IFR conditions.

The FAA proposed to require affected commuters to comply with the fuel reserve requirements of part 121.

Comments: Fairchild Aircraft comments that the FAA failed to take into consideration that § 121.639 requires fuel to fly to an alternate airport regardless of conditions, and finds that the proposed rule would have a detrimental impact economically, with no related gain in safety. Fairchild suggests that the FAA adopt § 135.209, which requires a 30-minute reserve for airplanes with fewer than 31 seats. Samoa Air comments that the proposal would require a 45-minute reserve for flights that average 30 minutes and is therefore unnecessary. Raytheon adds that its aircraft would have to give up one of 19 passengers to carry the additional fuel. Raytheon argues that smaller airplanes make shorter flights than big airliners, can operate to and from shorter runways, and are closer to an alternate airport. Therefore, the 10–19 seat airplane should be exempt from this requirement. Commuter Air Transport comments that all of its current route analysis is done on a 45-minute reserve.

AACA states that fuel reserve requirements for part 121 are 50 percent higher than for operating identical aircraft under part 135. According to AACA, the large fuel reserves required for dispatching smaller turboprop aircraft under part 121 make those aircraft marginally economical to operate when faced with competition from piston-powered twins operated under part 135.

At the Las Vegas public hearing, Twin Otter International stated that taking the VFR fuel reserve from 30 to 45 minutes is 150 pounds of fuel. That is reducing the capacity of the airplane by one passenger. The commenter is not sure there would be any safety benefit for sightseeing operations.

A pilot in Alaska comments that the part 135 fuel reserve requirements are adequate and that adding more reserves would degrade the already limited payload of many affected aircraft. Two commenters point out that operations that begin as VFR may end up IFR and that a 45-minute reserve provides more options, than a 30-minute fuel reserve.

Another individual recommends adopting the 45-minute fuel reserve. While it may be argued that there are a greater number of potential alternate airports within 30 minutes flying time of a destination airport that are capable of handling smaller, commuter-type airplanes, some of these potential alternates may not be acceptable from the standpoint of having weather reporting or aircraft rescue and firefighting capability. Additionally, once airborne, fuel time and the 30-minute reserve (some of which is unusable) might pressure some crews into poor operational situations. A standard 45-minute reserve provides more options.

One individual states that commuters can quantify the costs of the additional 15 minutes of fuel reserve, which cannot be significant. The standardization and extra fuel safety margin should be worth the cost.

FAA Response: The FAA recognizes that there are some operations that appear not to require a 45-minute fuel reserve. One of these is the flight that only takes 30 minutes. The logical solution would be to carry 30 minutes of reserve fuel so that, at worst, the airplane could return to its airport of origin. However, in some circumstances, such as the sudden occurrence of bad weather, returning may not be possible. Therefore, the FAA agrees with commenters who point out that a 45-minute fuel reserve provides more options.

The FAA also acknowledges that for some airplanes the additional fuel may require the loss of a passenger seat and the FAA recognizes the burden of the 45-minute reserve. Accordingly, the FAA is allowing relief in the final rule for those who operate day VFR per operations specifications. However, the FAA retains the requirement for a 45-minute reserve whenever on an IFR flight plan, including under VFR conditions. The special rule allows relief to those who are truly VFR such as air tour operators and certain Alaskan operations. The relief applies only to

10–19 passenger seat operators with airplanes certificated after 1964. These smaller airplanes have more flexibility in VFR to find a suitable landing airport. This flexibility provides functional equivalency to part 121.

VI.A.15 Subpart V—Records and Reports

Subpart V prescribes requirements for the preparation and maintenance of records and reports for all certificate holders operating under part 121. Although many of the requirements are identical to or similar to the recordkeeping requirements in §§ 135.63 and 135.65, part 121 requires additional information, including new records and reports. Notice 95–5 proposed that affected commuters comply with the recordkeeping requirements of part 121.

Comments: Jetstream supports the application of subpart V to affected commuter operations.

RAA and ASA point out that § 121.715 on in-flight medical emergency reports is an obsolete requirement that should be eliminated. These commenters also contend that § 121.711 on retention of communication records would require affected commuters to record each enroute radio contact and keep the record for 30 days. According to these commenters, recent interpretations of this requirement have caused some certificate holders to establish elaborate recording systems. The commenters question the need for these records and suggest that the requirement be eliminated if it no longer serves a useful purpose.

FAA Response: The FAA agrees with commenters that § 121.715, relating to inflight medical emergencies, is obsolete and it has been deleted in the final rule. The commenters are correct that § 121.711 requires certificate holders to record each en route radio contact and keep the record for 30 days. This requirement is necessary for all certificate holders and has been retained in the final rule.

VI.B. Part 119—Certification: Air Carriers and Commercial Operators: Summary

Part 119 is a new part that consolidates into one part the certification and operations specifications requirements for persons who operate under parts 121 and 135. For the most part, these regulations are currently in SFAR 38–2, which replaced the certification and operations specification requirements in parts 121 and 135 in response to the Airline Deregulation Act of 1978.

Part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988; Docket No. 25713). Based on comments received on the definition of ''scheduled operation'' in that notice, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in 1993 (58 FR 32248; June 8, 1993; Docket No. 25713). In Notice 95–5, the FAA republished the entire text of part 119 for comment because of the length of time since the first NPRM, the number of changes that were made to the proposed text, and the significance of the changes to part 119 that resulted from the review of commuter operations. Each section of part 119 that had been changed since the previous notices was explained in the preamble to Notice 95–5.

The first objective of part 119 is to establish a permanent guide in a new part that will enable persons who provide transportation of people or cargo to determine what certification, operations, maintenance, and other regulatory requirements they must comply with. A second objective is to set out procedural requirements for the certification process that apply to all certificate holders conducting operations under part 121 or part 135.

Part 119 accomplishes the following:

(1) Incorporates much of SFAR 38–2 as Subparts A and B;

(2) Revises certification procedures now in parts 121 and 135 and consolidates them as Subpart C;

(3) Revises wet leasing requirements;

(4) Provides definitions for terms such as ''direct air carrier'' and ''kind of operation,'' and clarifies the requirements for operations specifications by adding definitions for terms such as ''domestic operation'' and ''supplemental operation;''

(5) Provides a roadmap for certificate holders to lead them to the operating rules in part 121, 125, or 135 that they must comply with for the kind of operations that they conduct;

(6) Adds a new requirement for a Director of Safety; adds management requirements for domestic and flag operations conducted under part 121 consistent with those that now exist for supplemental operations conducted under part 121; and consolidates part 121 and part 135 management requirements;

(7) Rescinds part 127 and any requirements that pertain solely to helicopters in part 121, Subparts A through D; and

(8) Throughout part 121, Subparts A through D, and part 135, Subpart A, changes various references from CAB requirements to DOT requirements, changes terminology where needed, and makes incidental editorial changes.

Comments on Part 119

This section contains a summary and a response to the comments received on specific sections of part 119.

General Comments on part 119. USAir Express expresses concern over the 7-year time lag between when part 119 was originally introduced and the issuance of Notice 95–5. This commenter suggests that since many changes have occurred in the air industry and in the FAA, it may be best to issue subparts A and B of part 119, but to leave the requirements in subpart C in their current form in parts 121 and 135. NATA similarly contends that ''the unknown effects of the requirements contained in part 119 are not adequately considered in Notice 95–5's cost-benefit analysis.'' Both of these commenters believe that the new requirements in part 119 impose unnecessary administrative burdens for certificate holders.

FAA Response: The FAA disagrees with the arguments presented by the commenters. For the most part, subchapter C is a recodification of the existing part 121 and 135 certification requirements for applicants for air carrier or operating certificates. In some instances, such as wet leases under § 119.53, recency of operation under § 119.63, and management personnel under §§ 119.65 and 119.67, where substantive changes are made, further discussion is contained elsewhere in this preamble.

Section 119.2—Compliance. The final rule contains a new § 119.2 that states that certificate holders shall continue to comply with SFAR 38–2 until 15 months after the publication date of the final rule or the date on which the certificate holder is issued part 121 operations specifications, whichever occurs first.

Section 119.3—Definitions. Section 119.3 contains definitions for the five kinds of operations conducted under parts 121 and 135 (Domestic, Flag, and Supplemental in part 121 and Commuter and On-demand in part 135). The FAA proposed to move the affected commuters to part 121 by changing the definitions for ''Commuter operations,'' ''Domestic operations,'' and ''Flag operations.'' Comments on these definitions as they relate to affected commuters are discussed earlier in the preamble under ''V.B. Applicability.'' Other comments on proposed definitions are discussed in this section.

General comments on definitions. There were several comments on the lack of definitions for certain terms in the proposed rule, and, in some cases, the lack of distinctions drawn among certain terms. Helicopter Association International (HAI) cites the lack of a definition for ''common carrier,'' saying that it is hard to understand the difference between this and the ''noncommon carrier.'' One commenter recommends that ''nonscheduled operations'' should substitute for ''on-demand operations'' and ''supplemental operations'' and that ''scheduled operations'' should replace the words ''domestic,'' ''flag,'' and ''commuter'' in order to simplify and standardize the regulations. Additionally, whenever the phrase ''flag operations'' needs to be

distinguished, ''scheduled foreign operations'' could be used instead. Further, this commenter suggests that ''since the term 'scheduled' now means any scheduled flight, there would be no need to define it, as the five round trips per week definition has been dropped.''

FAA Response: The FAA disagrees with the comment that ''scheduled'' and ''nonscheduled'' should be substituted for the terms ''domestic,'' ''flag,'' ''commuter,'' ''supplemental,'' and ''on-demand.'' These are five distinct kinds of operations that the FAA needs to identify and regulate separately according to the characteristics of each kind of operation and the terms are presently used throughout the regulations. Also, the ''five round trips per week'' concept has been reinstated for commuter operations with 9 or fewer passengers, as discussed in Section V.B., Applicability.

''Common carrier'' is a term that has been discussed in numerous court cases. ''Non common carriage'' is being defined in § 119.3.

''All-cargo operations''. Proposed § 119.3 defines ''all-cargo operation'' to mean any operation for compensation or hire that is other than a passenger-carrying operation. These operations follow the rules for on-demand or supplemental operations, regardless of whether the all-cargo operation is conducted on a regular, ''scheduled'' basis.

Comments: ALPA proposes that the FAA should discontinue the distinction between scheduled passenger and scheduled all-cargo operations and reserve that distinction for the nonscheduled all-cargo operation because there is little difference between the scheduled passenger and scheduled all-cargo operations.

FAA Response: The FAA has considered ALPA's suggestion; however, it is outside the scope of this rulemaking. However, the definition has been slightly modified so that passengers described in §§ 121.583(a) and 135.85 can be carried without the operation losing its all-cargo status.

''Commuter operations''. The proposed definition for ''commuter operations'' limits the use of this term to scheduled operations in airplanes having 9 or less passenger seats or in any size rotorcraft.

Comments: Fairchild Aircraft states that applying the term ''commuter operations'' to operations with 9 or fewer passenger seats or to rotorcraft is inappropriate because this use of the term differs from the generally accepted meaning, i.e. frequent service over short stage lengths and service to small communities. According to the commenter, under this proposed definition, commuter category airplanes will no longer be used in commuter operations. The commenter also states that the proposed definition is inconsistent with the use of the term ''commuter operator'' in part 93. The commenter suggests that a new term be invented for scheduled operations with 9 or fewer passenger seats or rotorcraft.

FAA Response: As was discussed in Notice 95–5 and earlier in this preamble, the term ''commuter'' is presently used in several different ways. The FAA agrees with the commenter that the proposed definition does not accommodate all of the different uses of the term ''commuter.'' However, operators of aircraft with 9 or fewer passengers do provide frequent service over short stage lengths and service to small communities. Therefore, the term is appropriate for these operations. The FAA acknowledges that this definition differs from the definition of ''commuter operator'' in part 93 and from the DOT definition. That inconsistency will continue.

''Domestic operation''. Proposed § 119.3 defines ''domestic operation'' to mean any scheduled operation in specified airplanes ''between any points within the 48 contiguous States of the United States or the District of Columbia'' (2)(i); ''between any points entirely within any State, territory, or possession of the United States'' (2)(ii); or ''between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia'' (2)(iii).

The only comment received on this proposed definition is the comment on its inclusion of a tour operation that departs from and returns to same point which is discussed earlier. One change in the proposed definition is replacing the words ''any required crewmember'' with the words ''each crewmember'' to be consistent with the treatment of the single-engine Otter airplane as previously discussed. Additionally, the final rule has been slightly modified to include some of the language currently used in SFAR 38–2.

''Flag operation''. Proposed § 119.3 defined ''flag operation'' to mean a scheduled operation conducted in specified airplanes ''between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively'' (2)(i); or ''between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States or the District of Columbia (2)(ii).

Comments: AACA comments that currently Alaskan operations conducted under part 121 are conducted under the flag rules of part 121. According to the commenter, a number of Alaska operators currently hold operating authority and operations specifications to fly scheduled or charter service to Canada, and to the Commonwealth of Independent States (the Russian Federation). The commenter states that the rulemaking should clarify what operating rules are to be used for operations that previously operated solely under flag rules. According to the commenter, since most of the flights to the Russian Federation are on-demand, the impact of part 119 on these flights needs to be thoroughly analyzed.

FAA Response: Other than minor changes, the proposed definition of ''flag operations'' remains in the final rule as proposed. Accordingly, scheduled operations conducted under part 121 between a point in Alaska to a point outside of Alaska will be considered flag operations. Scheduled operations between a point in Alaska and another point in Alaska will be considered domestic operations. In fact, scheduled operations from one point in Alaska (or any other state) to the same point are considered domestic operations. Nonscheduled operations, whether between points within Alaska or between a point in Alaska and a point outside of Alaska, will be considered supplemental operations or on-demand.

One minor change in the definition adds operations between two foreign points to the list of locations included as flag operations.

''Maximum payload capacity''. The proposed definition for ''maximum payload capacity'' is the same as the one currently used in SFAR 38–2, except for the allowances for determining the standard average weights for crewmembers.

Comments: GAMA comments that the standard oil allowance of 350 pounds found in the definition of ''maximum payload capacity'' should be changed to coincide with the type certificated oil value. The commenter points out that the 350 pound value greatly exceeds any value found among present and future 10–19 passenger commuter airplane designs. Fairchild suggests that the definition refer to ''full oil'' and that the specific 350 pound allowance should be deleted. RAA states that the definition uses obsolete values for minimum oil and fuel and recommends that the FAA eliminate the distinction in the

definition between aircraft with and without a maximum zero fuel weight and eliminate specific minimum weights for crewmembers, oil, and fuel.

FAA Response: In response to comments on the standard oil allowance, the FAA has revised the standard oil allowance in the definition of ''maximum payload capacity'' to add: ''or the oil capacity as specified on the Type Certificate Data Sheet.'' The FAA did not eliminate specific weights for crewmembers, oil, and fuel from the definition, as requested by commenters, because these weights are necessary guidelines for determining maximum payload capacity. They are not operational weight values but are used merely to establish the air operator certification and operation requirements for all-cargo and combination of cargo and passenger aircraft. This definition is not used in the computation of weight and balance.

''On-demand operation'' and ''Supplemental operation''. The definitions of ''on-demand operation'' and ''supplemental operation'' were rewritten for Notice 95–5 to make it clearer which operations fall into these categories. The proposed definitions did not change significantly from current rules or from the original 1988 NPRM, except for one important difference. Notice 95–5 does not change the basic dividing line between on-demand and supplemental operations. A configuration of more than 30 passenger seats or a payload capacity of more than 7,500 pounds is a supplemental operation, while a configuration of 30 or less passenger seats and a payload of capacity of 7,500 pounds or less is an on-demand operation. However, if a specific airplane with a passenger-seating configuration of 10 to 30 seats is used in domestic or flag operations as a result of this rule, any nonscheduled operation conducted with that airplane must be conducted under the part 121 supplemental rules, instead of under the on-demand rules of part 135.

Comments: Fairchild Aircraft suggests that airplanes' switching between regulatory parts should not be difficult and asks that the FAA eliminate all unnecessarily burdensome conformity, equipment, and record checks.

FAA Response: This requirement is necessary because an airplane must be listed in a certificate holder's operations specifications as either a part 121 or a part 135 airplane; it cannot be switched back and forth between parts without a major investment of time and resources by both the certificate holder and the FAA. Switching between parts entails many things, including airplane conformity checks, equipment checks, and record checks. These are all necessary checks that the FAA must perform to fulfill its safety oversight function.

Section 119.5—Certifications, Authorizations, and Prohibitions. This section identifies the type of certificate (air carrier or operating) the Administrator issues to certificate holders, depending on the nature of their operations, and specifies certain authorizations and prohibitions associated with those certificates for specific types of certificate holders.

Comments: A commenter claims that the distinction between the air carrier certificate and the operating certificate is ambiguous. He poses two questions: ''Why would we prohibit a 737, 121 certificated, intrastate, common carriage operator (who presumably would have an operating certificate) from engaging in other common carrier operations?'' The second question is ''why would we prohibit a part 121 common carriage operator with an air carrier certificate from providing non-common carriage?''

FAA Response: An intrastate common carrier who wishes to conduct interstate operations must first obtain economic authority to conduct those operations from the Department of Transportation. Once that authority is granted, the FAA would issue an air carrier certificate to that operator if the FAA concluded that the operator could safely conduct those operations. In regard to the distinction between common carriage and noncommon carriage, the essential difference is the presence or absence of a holding out. The FAA believes that an operator engaged in common carriage (holding out) cannot unequivocally claim that it can engage in a noncommon carriage operation that would not have benefited from the holding out activities of the common carriage operation.

Section 119.7—Operations Specifications. In § 119.7 the FAA proposed identifying items that must be contained in each certificate holder's operations specifications. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.9—Use of Business Names. In this section, the FAA proposed to prohibit certificate holders that operate airplanes under part 121 or 135 from using a business name other than the name appearing in a certificate holder's operations specifications. The FAA proposed that the name of the certificate holder conducting the operation must be displayed on the airplane and clearly visible and readable to a person standing on the ground at any time except during flight time, and that the means of displaying the name must be acceptable to the Administrator.

Comments: Gulfstream Air, NATA, RAA, SP Aircraft, and two individuals address the requirement to have the certificate holder's name on the aircraft. Four recommend that the requirement not apply to on-demand operations. One opposes the requirement because, as an on-demand operator, his customers often do not want the name of an airline appearing on the aircraft, but rather prefer to arrive in what is believed to be their corporate aircraft. One commenter supports the proposal but recommends that the name of the certificate holder should be near to and visible from the main cabin entry door, not just anywhere on the aircraft. Commenters request clarification of ''clearly readable and visible'' since this could imply that very large letters must be used. Also, three commenters indicate that the phrase ''acceptable to the Administrator'' needs to be defined.

FAA Response: The purpose of this requirement is for the FAA to be able to identify, primarily for purposes of ramp inspections, those who appear to have operational control of the airplane. Some carriers use names for their businesses other than their corporate name. These are often called ''doing-business-as'' or ''DBA'' names. All of a certificate holder's DBA names must be listed in its operations specifications. A certificate holder may also paint a DBA name on the outside of the aircraft. However, in order to be in compliance with this section, the certificate holder's name must also appear on the outside of the aircraft.

Because this regulation applies to airplanes ranging in size from a small reciprocating-engine-powered airplane to a Boeing 747, it is not practical for the FAA to define the size letters that would be required. Any means of identification which satisfies this requirement is acceptable, including signs temporarily affixed in windows or on the door or fuselage of the airplane.

The term ''acceptable to the Administrator'' is interpreted to mean acceptable to an authorized representative of the Administrator. In this case, a certificate holder's principal inspector would determine if the means of displaying the name is acceptable, based on written guidance from FAA Headquarters. The final rule is the same as proposed.

Section 119.21—Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes. Section 119.21 contains the regulatory roadmap that requires domestic, flag, and supplemental operations to be conducted under part

121 and commuter and on-demand operations to be conducted under part 135. Section 119.21(a)(3) states that the Administrator may authorize or require that (1) Certain certificate holders conducting supplemental operations between airports that are also served by the air carrier's domestic or flag operations, conduct those operations under the domestic or flag rules; and (2) certain all-cargo operations that regularly and frequently serve the same two airports may be required to be conducted under the domestic or flag rules.

Comments: The National Air Carrier Association (NACA) recommends deleting ''or require'' in the second sentence of proposed § 119.21(a)(3). The language goes far beyond the current language of SFAR 38–2.4(a)(3) or part 121 in its application to supplemental passenger operations conducted ''between points that are also served by the certificate holder's domestic or flag operations.'' The preamble does not provide sufficient explanation or justification to require the application of domestic or flag operating requirements to supplemental passenger operations that are operated over routes where an operator also has domestic or flag operations. There are sufficient economic and operational safeguards already in place to preclude abuse. NACA believes that what ''may be required'' will quickly become ''what is required,'' with the FAA unilaterally imposing the requirement to operate certain nonscheduled passenger operations under domestic or flag rules. There is no safety or accident history to justify more restrictive regulations. NACA concurs that frequency of service between a pair of points should not be the criterion for determining which rules apply.

FAA Response: The FAA concurs with the comments from NACA on the wording of the rule and the words ''or require'' have been removed in the final rule.

Section 119.25—Rotorcraft operations. Section 119.25 directs that all rotorcraft operations be conducted under part 135 regardless of the size or seating capacity of the rotorcraft. However, external-load operators and agricultural aircraft operators must comply with part 133 or part 137 of the FAR, respectively.

Notice 95–5 proposed to rescind part 127 because rotorcraft operators that previously operated under part 127 are directed in § 119.25 to conduct those operations under part 135. Part 135 has been more recently updated and, therefore, provides a more appropriate level of safety for rotorcraft operators than part 127.

Comments: HAI opposes removing part 127 at this time. HAI supports a review and update of this part in the future, but states that to simply remove this part now would be to allow the certificate-issuing district office unlimited discretionary powers in the design of appropriate operations specifications.

FAA Response: Part 127 is not a current part because SFAR 38–2 directed all rotorcraft operators to conduct their operations under part 135. Appropriate operations specifications for each certificate holder operating either airplanes or any size rotorcraft are developed by FAA Headquarters. The standard paragraphs are completely designed by Headquarters, while nonstandard paragraphs are reviewed and concurred on by Headquarters. Therefore, the certificate-holding district office does not have unlimited discretionary powers.

Section 119.33—General requirements. In § 119.33 the FAA proposed that applicants for certificates be required to conduct the proving tests required for certification under the appropriate requirements of part 121 or part 135. The purpose of the tests is to demonstrate (as one of the last steps in the certification process) that the applicant is qualified and eligible to receive a certificate. The change permits applicants to complete the certification process without having to obtain either a deviation or certification to conduct operations under part 125. The FAA also proposed to amend §§ 121.163, 125.1, and 135.145 to make the proving test requirements consistent in those parts. No comments were received on these § 119.33 issues and the final rule is adopted as proposed.

Section 119.35—Certificate application. This section requires a certificate applicant to submit the application 90 days prior to the intended date of operation instead of the current standard of 60 days. This length of time accounts for the actual amount of time required by the FAA to properly process applications and to allow for agency documentation in the formal review period.

Paragraphs (c) through (h) of this section are a recodification of §§ 121.47, 121.48, and 121.49, which deal generally with the disclosure of financial information and of people/entities that would control the new certificate holder, applicable only to two categories of carriers: those who are not air carriers and those applying for authority to engage in intrastate common carriage but have not undergone fitness review by the Department of Transportation. The FAA believes that these requirements are crucial to ensuring safety by providing a check of financial, management, and other information about of the certificate holder and his or her ability to conduct safe operations.

Comments: NATA expresses concern about the utility of requiring detailed financial reporting, because safety problems are ''more appropriately discovered through operational inspections'' than through financial data. SP Aircraft comments that requiring detailed financial reporting seems excessive for small craft operators of on demand service since this requirement has not been proposed before now, and no explanation was provided for it in Notice 95–5. This commenter shares the concern that the reporting of financial records would in no way enhance the safety of operations that the FAA claims this proposal serves. Additionally, the commenter criticizes the requirement for insurance in that requiring the applicant to have insurance prior to submitting the application is an unnecessary burden due to the uncertain time span before application and review is complete. Thus, it recommends requiring that insurance should be in place before operations begin.

Fairchild Aircraft comments that § 119.35 fails to define the requirements for submitting detailed financial data, and recommends that the FAA establish the minimum qualifications that must be met under part 119, subpart C.

FAA Response: The financial reporting requirements in § 119.35(c) through (h) apply only to persons who are not air carriers, commonly called ''commercial operators,'' and who are applying for authority to engage in intrastate common carriage but have not undergone a fitness review by the Department of Transportation. The rule language has been updated to make it consistent with new definitions and certification requirements applicable to these operators. For persons applying for authority to conduct intrastate common carriage operations under part 135 these would be new requirements, as commenters point out. The FAA believes these requirements are necessary because financial information, management information, and information concerning who controls the certificate holder can reveal potential shortcomings on the applicant's ability to conduct a safe operation. The requirement for insurance information in § 119.35(h)(7) provides that the applicant report the period of coverage, not that it be in

effect before the application is submitted. Therefore the date that insurance coverage begins can be coordinated with the estimated date that operations begin. In order to make it clear that § 119.35 (c) through (h) apply only to applicants who are commercial operators, the final rule includes cross references within paragraphs (c) through (h), and paragraphs (g) and (h) have been switched.

Section 119.41—Amending a certificate. FAA proposed new procedures for making changes to the operating certificate. These procedures, modeled after 49 U.S.C. Section 44709 and similar to the procedures used to amend operations specifications, would standardize the amendment process. Applications for amendments to certificates would have to be submitted 15 days in advance of the time the operator wants the amendments to be effective, unless the Administrator approves a shorter period when circumstances warrant. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.47—Maintaining a principal base of operations, main operations base, and main maintenance base; change of address. Section 119.47 requires that a certificate holder maintain a principal base of operations and allows the certificate holder to establish a main operation and main maintenance base. Written notification must be provided to the certificate-holding district office before establishing or relocating a principal base of operation, a main operations base, or a main maintenance base. The proposed terminology clarified that the FAA needs to know the location of the primary point of contact between the FAA and the certificate holder. Certificate holders would no longer be required to report changes of address for business offices. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49—Contents of operations specifications. Section 119.49 requires that each certificate holder obtain operations specifications that list other business names under which the certificate holder may operate. Under part 121, there are no restrictions on the use of alternate business names on their operating certificates. Part 135 currently requires certificate holders to list their alternate business names on their operating certificates. The FAA proposed to require that alternate business names be shown on the operations specifications rather than on the operating certificate. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49 adds the requirement that operations specifications contain a reference to the economic authority issued by the OST. The economic authority issued by the OST is not a new requirement; the FAA proposed this reference to clarify that the requirement still exists. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49 also requires a certificate holder conducting domestic, flag, or commuter operations to obtain operations specifications that list each type of aircraft authorized for use and each aircraft's registration markings and serial number. Under part 121, the requirement to list registration markings is not required for domestic, flag, or commuter operations. The FAA proposed this requirement in the interest of consistency and to facilitate FAA enforcement and surveillance functions. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.51—Amending Operations Specifications. Under § 119.51 applications for amendments to operations specifications would have to be submitted 15 days in advance for minor or routine amendments; however the FAA proposed to require that certificate holders file applications to amend operations specifications at least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisition or airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations. It has been the FAA's experience that these types of major changes do take at least 90 days for the agency to determine that, as a result of the change, the applicant is properly and adequately equipped and is able to conduct a safe operation.

Under § 119.51(b), if the Administrator initiates an amendment to operations specifications, the certificate holder would have 7 days to submit written information or arguments on the amendment.

Under § 119.51(d), a certificate holder may petition for reconsideration of a decision on an amendment to operations specifications. If the amendment is not related to an emergency situation, the petition suspends the effectiveness of the amendment.

Comments: USAIR Express, RAA, Mesa, ASA address the required lead times proposed for making either desired or directed changes to operations specifications. Commenters state that the proposed requirements to file an air carrier-desired operations specifications change 90 days before the effective date is excessive. Additionally, the requirement to respond to changes in operations specifications within 7 days when directed by the Administrator and complete implementation within 30 days is unreasonable.

An individual, ASA, and RAA indicate that the proposed language in § 119.51(d) would not permit the continuation of the practice of staying the effectiveness of an amendment when an air carrier submits a petition for reconsideration. The commenters recommend that the petition for reconsideration stay the effective date of an amendment pending the final review of the petition.

FAA Response: In response to comments that a request to change operations specifications must be filed 90 days in advance of the desired effective date, the FAA will add ''unless a shorter time is approved'' to § 119.51(c)(1)(i) so as not to imply that a carrier must allow the full 90 days. The rest of paragraph (c) reflects current part 121 and part 135 language and is adopted as proposed.

Since § 119.51(d)(3) clearly states that, if a petition for reconsideration is filed within 30 days and if no emergency situation exists, the effectiveness of an amendment to operations specifications issued by the certificate-holding district office is stayed pending final review of the petition. The procedures for emergency situations, spelled out in paragraph (e), are not substantially different than currently found in §§ 121.79 and 135.17. Therefore there will be no changes to current procedures as a result of new § 119.51 (d) and (e).

Section 119.53—Wet leasing of aircraft and other transportation by air arrangements. Proposed § 119.53 on wet leasing would be revised from current § 121.6 to do the following: (1) clarify that the leasing requirements pertain only to wet leasing (which is defined in § 119.3 as a lease of an aircraft that includes the provision of any crewmember); (2) extend the wet leasing requirements to part 135 operations; (3) prohibit a wet lease from a foreign air carrier or any other foreign person; (4) prohibit a wet lease from any person not authorized to engage in common

carriage; (5) specify that the Administrator, upon approval of the wet lease, would determine which party to the agreement has operational control and would amend the appropriate operations specifications of both parties, if necessary; and (6) allow a wet lease charter flight to transport passengers who are stranded because of the cancellation of their scheduled flight, provided that the wet lease flight is authorized by OST or the Administrator, as applicable, and that the charter flight is conducted under the rules applicable to a supplemental or on-demand operation. These clarifications reflect for the most part current administrative procedures.

Comments: NACA proposes reorganization of § 119.53, including a new paragraph regarding operations specifications for short term wet leases (short term substitute service) that could occur without prior FAA approval in a situation where there is insufficient time to permit compliance with the usual requirements for a wet lease.

USAir Express sees this issue as an example of part 119 addressing changes which are not relevant to the goal of bringing commuter operations up to the standards of part 121, and imposing new restrictions on wet lease activities at the same time. This company finds fault with the fact that § 119.53 requires certificate holders conducting operations to be held to the same operations authorities as certificate holders arranging for the substitute operations.

British Airways objects to § 119.53 because it prohibits any wet leasing to U.S. carriers from foreign air carriers without any safety justification. British Airways sees this prohibition as interfering with healthy competitive relationships between carriers in an international market. Japan Airlines agrees with British Airways' point and adds that this ''discriminatory'' prohibition contradicts the Department of Transportation's economic regulations providing for wet leasing of aircraft by foreign air carriers to U.S. air carriers. Japan Airlines argues that foreign air carriers are permitted to operate aircraft in the U.S. only if they meet rigorous requirements of part 129 of the FAA regulations, which would imply that these aircraft are safe. Japan Airlines also claims that this regulation might be contrary to a friendship treaty between the United States and Japan. The company suggests that the FAA address any specific foreign carrier safety concerns with something other than a blanket prohibition of the type proposed.

FAA Response: The changes to current requirements for wet leasing in § 119.53 codify existing FAA policy on wet leasing. The FAA requires operators conducting wet leasing operations to hold operations specifications for the same kind of operation as that being conducted in order to be sure that the operator is qualified to conduct that kind of operation. Since foreign air carriers may conduct operations only under part 129, they do not hold operations specifications for current part 121 or part 135 certificate holders and, therefore, may not conduct wet leasing operations for part 121 or part 135 certificate holders. The FAA is considering NACA's suggestion regarding short term wet leasing and intends to request that ARAC develop recommendations on this issue. Regulatory language is amended to allow short notice wet lease operations to be conducted prior to providing information required by § 119.53(c).

Section 119.55—Obtaining deviation authority to perform operations under a U.S. military contract. Proposed § 119.55 establishes a new procedure to obtain deviation authority to perform under a U.S. military contract. This would require the certificate holder to submit this deviation authority request to DOD's Air Mobility Command (AMC), who would review the request and, in turn, forward it and the AMC recommendation on to the FAA for final review. The logic behind having the AMC review this is to provide an additional, and more efficient, evaluation by a more qualified authority on the needs of the military operation.

Comments: One commenter expresses concern about the FAA's need to have the AMC serve as an extra check on FAA knowledge of deviation authority. The commenter states that adding another agency to the process does not serve the interest of readiness, for during military operations, the demands from the military come ''fast and furious with many changes.''

FAA Response: As the FAA explained in Notice 95–5, during the Desert Shield/Desert Storm operations, the agency was inundated with requests for deviations. The AMC has the resources to consolidate these requests, identify the specific regulations from which relief is sought, and evaluate the requests to determine whether the relief sought would be needed to accomplish the military mission. This procedure will enable the agency to process these requests more efficiently, should the need arise in the future.

Emergency Operations (§§ 119.57 & 119.58). These two proposed new sections generally recodify §§ 121.57(c), 121.557, 121.559, and 135.19. Section 119.57 addresses emergency situations where it is impossible for the certificate holder who intends to conduct emergency operations to act without thorough and complex planning, such as during natural disasters like floods or earthquakes. Section 119.58 is tailored to emergency operations where thorough and complex planning are inherently impossible due to the critical issue of time and the nature of the emergency.

Comments: Three commenters express concern about this proposed section. One of the commenters believes that this consolidation of two related yet distinct categories would cause confusion: ''Section 119.57 relates to certificate authority to conduct certain operations on an emergency approval basis, while § 119.58 relates to emergency operational situations that may require emergency deviation from prescribed procedures and methods, weather minimums, and FARs to the extent required for *flight safety.*'' The commenter recommends renaming § 119.57 to read ''Obtaining Emergency Deviation Authority to Perform Unapproved Operations'' and § 119.58 to be ''Operational Emergencies Requiring Immediate Decision and Action.'' Additionally, the commenter expresses concern that § 119.58(b) needs to be modified to more clearly reflect dispatcher capability/responsibility, joint responsibility, and a cross-check mechanism to ensure critical operational decisions are not made at the exclusion of safety.

Another commenter states that while he supports the NPRM, he believes that this recodification would cause greater confusion and contradict the purpose of existing safety rules because it goes beyond the scope of the NPRM. He claims that ''[t]he two types of 'Emergency Authority' are of totally different contexts, are truly irrelevant to each other and there is no apparent advantage to this proposed modification''; hence, this proposed action is ''clearly unwarranted.''

The Airline Dispatchers Federation objects to the recodification of §§ 121.557, 121.559, and 135.19 as new § 119.58 on the grounds that emergency procedures are an operational issue, not a certification issue and thus should be located in the operational rules of part 121 and 135.

FAA Response: The FAA accepts the commenters' suggestions. Therefore § 119.58 does not appear in final part 119. Instead §§ 121.557, 121.559 and 135.19 will be retained in parts 121 and 135. However, the substance of proposed § 119.57 on obtaining

deviation authority for certain emergency operations does not appear in current part 121 or part 135. Therefore, this section is retained in the final rule. This new section will provide procedures for such situations as the recent hurricane in the U.S. Virgin Islands. Deviation authority was needed in order to allow rescue and supply flights into and out of damaged airports.

Section 119.59—Conducting tests and inspections. In § 119.59, the FAA proposed language to emphasize both the authority of FAA inspectors to gain access to a certificate holder's books and records and the fact that a certificate holder risks suspension of part or all of its operations specifications if it fails to provide that access. Without access to those records, the FAA cannot fulfill its safety mission. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.61—Duration of certificate and operations specifications. Section 119.61 sets out the conditions under which certificates or operations specifications become ineffective.

Comments: Two commenters recommend that when operations specifications are changed or superseded, the carrier should be required to surrender the obsolete copies to the FAA. This would preclude the chance of outdated operations specifications being in the hands of the ''field operators.''

FAA Response: It is the responsibility of the certificate holder to have procedures in place to ensure that the most current copies of the operations specifications are adequately and accurately distributed. The FAA is not requiring that outdated operations specifications be surrendered to the FAA because of the administrative burden that such a requirement would entail. However, the FAA has decided to incorporate into § 119.61 a new paragraph (c), which contains the § 135.35 language for surrender of operations specifications and certificate if a certificate holder terminates business.

Section 119.63—Recency of operation. Proposed § 119.63 would prohibit a certificate holder from conducting a kind of operation if that kind of operation has not been conducted for a period of 30 consecutive days. The certificate holder must advise the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and make itself available for any FAA reexamination that the FAA considers necessary.

Comments: Eight commenters address this proposed requirement. One says that 30 days is too short a period and recommends a 6–12 month period. NACA recommends a 6-month period. Comair comments that the requirement is burdensome to active air carriers wanting to conduct supplemental operations; this commenter says that the requirement should be changed to apply to certificate holders or air carriers who have not conducted *any* operations, not just a particular kind of operation, in the previous 30 calendar days. A similar comment is made by another individual. NACA comments that this requirement is burdensome to air carriers conducting any type of operation (domestic, flag, or supplemental), especially to carriers who provide these services under short-term, short notice wet leases. USAir Express states that the proposed rule would seriously impact the ability of part 121 domestic and flag operators to conduct occasional supplemental operations since these operations are often required on less than 5 days notice. Also, since many part 121 certificate holders conduct their supplemental operations using the same procedures as their scheduled operations, there is no benefit from this requirement. SP Aircraft says that the requirement would be burdensome to on-demand small aircraft operators and to the FAA and that the rule should provide relief for these certificate holders.

Mesa and RAA point out that the proposed rule is unclear in its use of the term ''kind of operation'' and recommend that the FAA define this term.

FAA Response: In response to comments, the FAA has made the following changes to § 119.63 in the final rule:

If part 121 and part 135 scheduled operators do not conduct scheduled operations for more than 30 days, the 5-day notification provision would apply. For part 121 and 135 scheduled operators, no notification is required to conduct supplemental or on-demand operations provided they continue to conduct scheduled operations without being dormant for more than 30 days.

Part 121 supplemental operators or part 135 on-demand operators who have not conducted supplemental or on-demand operations for more than 90 days must notify the FAA at least 5 days before resuming operations.

In response to the comment to define ''kind of operations,'' § 119.3 defines five kinds of operation as one of the various operations a certificate holder is authorized to conduct as specified in the operations specifications; that is, domestic, flag, supplemental, commuter, or on-demand.

Management Requirements (Proposed Sections 119.65 through 119.71). Notice 95–5 proposed to consolidate management personnel requirements for operations conducted under part 135 or part 121 into new part 119 and to apply management personnel requirements to domestic and flag operations. The management personnel requirements for operations conducted under part 135 (§§ 119.69 and 119.71) would be substantially the same as those currently in §§ 135.37 and 135.39. The management personnel requirements for operations conducted under part 121 (§§ 119.65 and 119.67) would be similar to those currently in §§ 121.59 and 121.61, which now apply only to supplemental operations.

The only significant changes under the proposed management requirements for part 121 and part 135 are as follows:

Director of safety. The FAA proposed that each certificate holder that conducts operations under part 121 must have a director of safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. The FAA believes that an independent, full time position is important if at all available or possible. However, it recognizes that in smaller operations, the director of safety function may be an additional function of a current manager. Section 119.65(b) provides flexibility in the requirements for positions and number of positions for management personnel, including the director of safety.

Director of operations. The FAA proposed for § 119.67(a) to require a director of operations to have both 3 years experience as a PIC of an aircraft under part 121 or part 135 and 3 years supervisory experience in a position that exercised control over any operations conducted with aircraft under part 121 or part 135.

In the case of a person becoming a director of operations for the first time, the FAA proposed that the PIC experience in large aircraft be recent, i.e., 3 years of experience within the past 6 years. (See proposed § 119.67(a)(3)(i).) Additionally, for all directors of operation under part 121, the minimum of 3 years of supervisory or managerial experience must have been obtained within the last 6 years. (See proposed § 119.67(a)(2).)

Additionally, for operations conducted under part 135, the FAA proposed that the director of operations have the following experience:

(1) At least 3 years of supervisory or managerial experience within the last 6 years, in a position that exercised

operational control over any operations conducted under part 121 or part 135; or

(2) For a person with previous experience as a director of operations, at least 3 years experience as a PIC of aircraft operated under part 121 or part 135; or for a person becoming a director of operations for the first time, the 3 years of PIC experience must have been obtained within the past 6 years.

Director of maintenance. To standardize the certificates required for the director of maintenance, proposed § 119.67(c) and 119.71(e) would require that a director of maintenance hold a current mechanic certificate with both airframe and powerplant ratings.

Also, the requirement in present § 135.39(c) that the required experience in maintaining aircraft must include the recency requirements of § 65.83 has been added to proposed § 119.67(c) and carried over to proposed § 119.71(e).

Chief pilot. Proposed § 119.71(c)(1) and (d)(1) omitted the word ''current'' from existing § 135.39(b)(1) and (b)(2) because these pilot certificates no longer have an expiration date and are revoked only for cause. The words ''and be qualified to serve as PIC in at least one type of aircraft used in the certificate holder's operation'' are added to clarify that the chief pilot must meet recency of experience requirements and medical requirements.

In addition to holding the appropriate certificate, in order to be eligible to be a chief pilot in part 121 or 135 operations, a person must have at least 3 years experience as a PIC of aircraft operated under parts 121 or 135. However, if that person is becoming a chief pilot for the first time, the 3 years experience must have been obtained within the previous 6 years.

Chief inspector. Proposed § 119.67(d) requires a chief inspector for each operator conducting part 121 operations. In addition to the existing eligibility requirements, the chief inspector would be required to have at least 1 year of experience in a supervisory position maintaining large aircraft.

Deviation authority. Proposed §§ 119.67(e) and 119.71(f) authorize the Manager of the Flight Standards Division in the region of the certificate-holding district office to authorize a certificate holder to employ a person who does not meet the qualifications in proposed §§ 119.67 or 119.71. For a certificate holder or applicant that wants to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, airframe and powerplant certificate), the deviation authority sections would not cover such a lack of airman certification situation. The deviation authority provides a means for competent and qualified personnel who do not meet the management personnel qualifications to be employed in required positions.

Comments: A number of commenters responded to the proposed management requirements for part 119. These are discussed below.

Director of Safety. United Express comments that the creation of the director of safety position is in the best interest of the flying public but that the position's responsibilities will depend on airline size, equipment, and type of operations. This commenter says that for small certificate holders, the chief pilot or current director of operations could assume the duties. United Express also says that this position should qualify under current § 121.61.

NTSB and several other commenters say that the director of safety should be independent from operational functions and have direct access to the highest levels of management.

ALPA recommends that in code-sharing operations, the director of safety should report directly to the mainline Safety Vice President; if a code sharer does not have a director of safety, then code-sharing pilots should have access to the mainline safety organization. ALPA also recommends that the director of safety maintain a toll free telephone hotline. In addition, ALPA recommends that the director of safety's qualifications include at least 3 years of supervisory experience and possession of one of the following: an Airline Transport Pilot (ATP) license, Airframe and Powerplant (A & P) license or Dispatcher license, or demonstration of other approved equivalent aeronautical training.

Fairchild states that a separate director of safety position is unnecessarily burdensome and that safety is a concern of all managers. This commenter recommends changing § 119.65(a) so that the director of safety is not required to be a full-time position.

Comair, ASA, Gulfstream, and RAA say that § 119.67 does not provide any qualification requirements for the director of safety. These commenters request that the FAA permit certificate holders to designate directors of safety based upon their needs and without an FAA approval process.

Big Sky Airlines and NATA recommend that smaller certificate holders be allowed to combine the director of safety position with an already existing position. Metro International Airways also points out the burden of this requirement on small certificate holders (e.g., those with 10–15 employees or one or two aircraft). This commenter recommends that these certificate holders be allowed to determine which management personnel, especially the director of safety and chief inspector, are needed and to combine these and other positions as well.

One commenter recommends that smaller operations be permitted to employ contracted or part-time safety officers who could act for more than one carrier. This could reduce these certificate holders' financial burden associated with hiring additional personnel.

One commenter recommends that the director of safety have direct communication paths with dispatch, maintenance, flight attendant, and ground operations.

Samoa Air also points out that the requirement for additional management personnel for certificate holders with three or fewer aircraft is burdensome and that a proper internal evaluation program should keep management informed of the certificate holder's safety status.

One commenter says that § 119.69 does not require a part 135 certificate holder to have a director of safety and that this position should be required for these certificate holders.

One commenter recommends that the director of safety be excluded from enforcement action similar to the Aviation Safety Reporting System under § 91.25.

Inter Island recommends that the safety officer be any line pilot with 6 months experience with the company and that this position be kept from the working ranks of line pilots. According to the commenter, this function should not be given to the chief pilot or director of operations.

Other comments on management requirements: USAir Express says that the requirements of this proposed section are burdensome to large certificate holders because it imposes requirements which are designed for small certificate holders onto these large certificate holders. This commenter states that large certificate holders might have many positions at the Vice President or Director's level to fulfill these management functions that a small certificate holder would fulfill through the positions of director of operations, director of maintenance, chief pilot or chief inspector. This commenter also notes that the management of large carriers is more complex, involving knowledge of such areas as labor relations, legal issues, finance, and quality assurance. To

assume that these subjects can be mastered while also obtaining the required number of years of experience for each management position is unrealistic. Finally, this commenter objects to the explanation of deviation authority regarding the allowance of unlicensed persons to hold management positions and says that it is inconsistent with the language of the proposed rule itself.

Fairchild Aircraft finds § 119.67 to be more stringent than its corresponding section in part 121 (§ 121.61). This commenter suggests that § 119.67(a)(1) be changed to allow the director of operations to hold or *have held* an ATP certificate and also to delete the words ''large aircraft'' in order to recognize that not all former part 135 certificate holders have been operating large airplanes.

RAA and many other commenters support ''grandfathering'' existing key management personnel in the wake of the proposed rule's more stringent experience and qualification requirements. These commenters point out that existing personnel, such as the directors of operations and maintenance, chief pilot, and chief inspector, may already possess excellent management skills, and that to hire new personnel would be unnecessary and burdensome. Action Airlines suggests that instead of having to replace existing personnel when air carriers upgrade their equipment, they should have the option to get deviation or wavier authority and continue to use existing directors of operations, chief pilots, and directors of maintenance.

Metro International Airways states that the addition of management personnel would have a significant impact on operators that only operate two or three affected aircraft. The positions of chief inspector can be handled effectively by the director of maintenance. With such a small fleet of aircraft, the chief inspector would spend many hours idle. Also, a small commuter is more likely to contract out most, if not all, maintenance functions. In this situation, the director of maintenance could easily oversee that all work is completed to FAA standards and signed off by an appropriate person with an IA rating.

The commenter also opposes the proposed increase in management experience, indicating it will have a significant impact on small and proposed commuter airlines. Not only will higher wages be needed to attract those applicants that have the necessary experience, but the operators will need to lure those who qualify from secure positions within the industry. The commenter requests that the FAA define ''large,'' stating there is a difference between a B747 and a Beech 1900C. The commenter recommends that the FAA retain the part 135 provision that allows the combinations of one or more of the required management personnel. As the airline grows it is understandable that the management functions would separate and the manager's experience level would rise. The addition of a chief inspector and a director of safety would create a top heavy airline that could not operate at a reasonable cost. Combining these positions must be allowed so new entrants with small fleets will have the chance to build an organization proudly serving the public and the public's interest.

American supports modifying the minimum requirements for director of operations, chief pilot, director of maintenance, and chief inspector under § 135.37 operations to reflect part 121 standards.

One commenter objects to the proposed requirement that a director of maintenance have 5 years experience in the past 5 years because it could disqualify those in management positions who may have been the victims of downsizing and companies going out of business.

One commenter disagrees with the 6-year currency requirement for the 3 years as PIC (under proposed § 119.67(a)) for a person becoming a director of operations for the first time. This commenter believes that PIC time is much more relevant to a director of operations' administrative responsibilities and that the currency requirement should apply to the chief pilot, whose function is much more technical. This commenter also disagrees with proposed § 119.71(c)(1) and (d)(1) which exempts the chief pilot from being qualified to serve as PIC in operations conducted under part 121. He believes that since the chief pilot is directly responsible for the proficiency of the pilots, he should be able to serve in this capacity.

Commuter Air Technologies says that 4 years in an aircraft type is more important than 4 years in maintaining a large aircraft as qualification for chief inspector. This commenter adds that small certificate holders rely on senior maintenance personnel, such as, director and chief inspector, for technical and administrative leadership and that experience in aircraft type would better provide this type of experience and skill as opposed to experience in maintaining large aircraft. Similarly, one commenter objects to the use of the phrase ''large aircraft'' when many commuter predecessors are not ''large'' aircraft (by the definition of SFAR 41); this could exclude qualifying excellent candidates from such management positions as director of operations, chief pilot, and director of maintenance.

FAA Response: The FAA contends that most currently employed directors meet the new standards. For those directors who do not, § 119.67(e) allows operators to request authorization from their district office for the continued employment of those directors. However, note that §§ 119.67(e) and 119.71(f) provide for exceptions from experience requirements, but not from requirements to hold necessary certificates. The FAA anticipates that most operators whose directors do not meet the new requirements will request authorization and that those requests will be granted. The FAA agrees that in some cases the proposed recency requirements would place an unnecessary burden on those directors who may have extended periods of unemployment prior to being hired. Thus, for the final rule, the FAA is changing some of the recency requirements. The final rule also standardizes the language as much as possible between operations and airworthiness management positions. The final rule gives relief for those operators who do not operate large aircraft.

The FAA will develop handbook guidance on management personnel to provide FAA inspectors with criteria to respond to requests concerning issues raised by commenters, such as the combining of certain positions in the case of small operators. In analyzing such requests, the FAA will consider the number of airplanes being operated, the number of employees, the complexity of the operation, the ability of the operator to perform required tasks, and the equivalent level of safety.

The final rule contains the following requirements:

Director of Safety

The major carriers have told FAA that they already have established this position and are already fulfilling this function. For other operations, § 119.65(b) provides flexibility for establishing this position.

Director of Operations

Section 119.67 requires 3 years of experience as PIC of a large airplane operated under part 121 or part 135 of this chapter when the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small

airplanes. For first time applicants, both §§ 119.67 and 119.71 require that the 3 years PIC experience must have been obtained within the past 6 years.

Chief Pilot

Section 119.67 requires 3 years of experience as PIC of a large airplane operated under part 121 or part 135 of this chapter when the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes. For first time applicants, both §§ 119.67 and 119.71 require that the 3 years PIC experience must have been obtained within the past 6 years.

Director of Maintenance

Section 119.67 requires 3 years of experience within the last 6 years in maintaining or repairing aircraft. Section 119.71 requires 3 years of experience within any amount of time in maintaining or repairing aircraft. The requirement in § 119.67(c)(4)(i) that the director of maintenance have experience in maintaining ''large aircraft'' has been changed to ''aircraft with 10 or more passenger seats'' to provide for maintenance experience acquired by work for an affected commuter.

Chief Inspector

The requirement in § 119.67(d)(2) and (d)(3) that the chief inspector have experience in maintaining ''large aircraft'' has been changed to ''aircraft with 10 or more passenger seats'' to provide for maintenance experience acquired by work for an affected commuter.

Derivation and distribution tables. The purpose of the revisions to part 121, Subparts A, B, C, and D, and part 135, Subpart A, is to delete all sections which have been moved to part 119, such as requirements using outdated terminology. Subparts B, C, and D, and certain sections of Subpart A of part 121 are entirely deleted as well as certain sections of subpart A of part 135 because these requirements are either obsolete or have been moved to proposed part 119. SFAR 38–2 terminates 15 months after the date of publication of this final rule and many of its provisions have been moved to part 119. Also part 127 is deleted as discussed above under ''§ 119.25-Rotorcraft operations.'' Table 3 is a derivation table, showing the origin and current source in SFAR 38–2, part 121, or part 135 of many of the new sections in part 119. Table 4 is a distribution table, showing the location in part 119 for each section removed from part 121, part 135, and SFAR 38–2.

TABLE 3.—DERIVATION TABLE FOR PART 119

New section	Based on
Subpart A:	
119.1(a)	New language.
119.1(b)	SFAR 38–2, Section 1(a).
119.1(c)	New language.
119.1(d)	New language.
119.1(e)	New language.
119.2	New language.
119.3	SFAR 38–2, Section 6 and new language.
119.5(a)	SFAR 38–2, Section 2(a).
119.5(b)	SFAR 38–2, Section 2(b).
119.5(c)	New language.
119.5(d)	SFAR 38–2, Section 1(a)(3).
119.5(e)	SFAR 38–2, Section 1(a)(3).
119.5(f)	SFAR 38–2, Section 1(b).
119.5(g)	SFAR 38–2, Section 1(c), 121.4, 135.7.
119.5(h)	SFAR 38–2, Flush paragraph following Section 1(a)(3) and new language.
119.5(i)	121.27(a)(1), 121.51(a)(1), 135.13(a)(3).
119.5(j)	135.33.
119.7(a)	SFAR 38–2, Section 3.
119.7(b)	121.23, 121.43.
119.9(a)	135.29.
119.9(b)	New language.
Subpart B:	
119.21(a)	SFAR 38–2, Section 4(a), 121.3.
119.21(b)	SFAR 38–2, Section 4(b).
119.21(c)	New language.
119.23(a)	SFAR 38–2, Section 5(a).
119.23(b)	SFAR 38–2, Section 5(b).
119.25(a)	SFAR 38–2, Section 4(c), 5(c), and (d) and new language.
119.25(b)	SFAR 38–2, Section 4(c), 5(c), and (d) and new language.
Subpart C:	
119.31	SFAR 38–2, Section 1(c), 2(a) and (b), 121.3, and 135.5.
119.33(a)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(b)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(c)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.35(a)	121.26, 121.47(a), 135.11(a).
119.35(b)	121.26, 121.47(a), 135.11(a).
119.35(c)	121.47(a).
119.35(d)	121.47(b).
119.35(e)	121.47(c).
119.35(f)	121.47(d).
119.35(g)	121.48.
119.35(h)	121.49.
119.37(a)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(b)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(c)	121.25(a), 121.45(a), 135.11(b)(1) and new language.

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New section	Based on
119.37(d)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(e)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.39(a)	121.27(a)(2), 121.51(a)(3), 135.11(b)(1).
119.39(b)	121.27(a)(2), 121.51, 135.13(a)(2) and (b).
119.41(a)	121.77(a), 135.15(a).
119.41(b)	New language.
119.41(c)	121.77(b), 135.15(b).
119.41(d)	121.77(c), 135.15(d).
119.43(a)	121.75(b), 135.63(a)(2).
119.43(b)	121.75(b), 135.63(a)(2).
119.47(a)	135.27(a).
119.47(b)	121.83, 135.27(b).
119.49(a)	121.5, 121.25(b), 121.45(b), 135.11(b), and new language.
119.49(b)	121.45(b), 135.11(b)(1) and new language.
119.49(c)	135.11(b)(1) and new language.
119.49(d)	121.75, 135.81.
119.51(a)	121.79(a), 135.17(a).
119.51(b)	121.79(b), 135.17(d).
119.51(c)	121.79(c), 135.17(b), and new language.
119.51(d)	121.79(d), 135.17(c) and (d).
119.51(e)	121.79(b), 135.17(c) and (d).
119.53(a)	121.6(a).
119.53(b)	New language.
119.53(c)	121.6(b).
119.53(d)	121.5(c).
119.53(e)	New language.
119.53(f)	New language.
119.55(a)	121.57(a) and (b).
119.55(b)	121.57(a) and (b).
119.55(c)	121.57(a) and (b).
119.55(d)	121.57(a) and (b).
119.55(e)	121.57(a) and (b).
119.57(a)	121.57(c).
119.57(b)	New language.
119.58(a)	135.19(b).
119.58(b)	135.19(a).
119.58(c)	135.19(c).
119.59(a)	121.81(a), 135.73, and new language.
119.59(b)	121.73, 121.81(a), 135.63(a), 135.73, and new language.
119.59(c)	121.81(a).
119.59(d)	New language.
119.59(e)	New language.
119.59(f)	New language.
119.61(a)	121.29(a), 121.53(a), (c), and (d), 135.9(a).
119.61(b)	121.29(a), 121.53(c), and new language.
119.61(c)	135.35.
119.63(a)	New language.
119.63(b)	New language.
119.65(a)	121.59(a).
119.65(b)	121.59(b).
119.65(c)	121.59(b).
119.65(d)	121.61 and new language.
119.65(e)	121.59(c).
119.67(a)	121.61(a) and new language.
119.67(b)	121.61(b) and new language.
119.67(c)	121.61(c), 135.39(c) and new language.
119.67(d)	121.61(d) and new language.
119.67(e)	121.61(b), 135.39(d).
119.69(a)	135.37(a).
119.69(b)	121.59(b), 135.37(b).
119.69(c)	121.59(b).
119.69(d)	135.39 and new language.
119.69(e)	121.59, 135.37(c).
119.71(a)	135.39(a)(1) and new language.
119.71(b)	135.39(a)(2) and new language.
119.71(c)	135.39(b)(1) and new language.
119.71(d)	135.39(b)(2) and new language.
119.71(e)	135.39(c) and new language.
119.71(f)	135.39(d) and new language.

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119

	Replaced by
Part 121:	
121.3	119.21(a); 119.31; 119.33.
121.4	119.5(g).
121.5	119.49(a).
121.6(a)	119.53(a).
121.6(b)	119.53(c).
121.7	119.21.
121.9	deleted.
121.13	119.25.
121.21	119.1.
121.23	119.7(b).
121.25(a)	119.37(a), (b), (c), (d), (e), (f), and (g).
121.25(b)	119.49(a).
121.26	119.35 (a) and (b).
121.27(a)(1)	119.5(i).
121.27(a)(2)	119.39 (a) and (b).
121.29(a)	119.61 (a) and (b).
121.41	119.1.
121.43	119.7(b).
121.45(a)	119.37(a), (b), (c), (d), (e), (f), and (g).
121.45(b)	119.49 (a) and (b).
121.47(a)	119.35(a), (b), and (c).
121.47(b)	119.35(d).
121.47(c)	119.35(e).
121.47(d)	119.35(f).
121.48	119.35(g).
121.49	119.35(h).
121.51	119.39(b).
121.51(a)(1)	119.5(i).
121.51(a)(3)	119.39(a).
121.53(a)	119.61(a).
121.53(c)	119.61 (a) and (b).
121.53(d)	119.61(a).
121.55	deleted.
121.57(a)	119.55(a), (b), (c), (d), and (e).
121.57(b)	119.55(a), (b), (c), (d), and (e).
121.57(c)	119.57(a).
121.59	119.69(e).
121.59(a)	119.65(a).
121.59(b)	119.65 (b) and (c); 119.69 (b) and (c).
121.59(c)	119.65(e).
121.61	119.65(d).
121.61(a)	119.67(a).
121.61(b)	119.67 (b) and (e).
121.61(c)	119.67(c).
121.61(d)	119.67(d).
121.71	119.1.
121.73	119.59(b).
121.75	119.49(d).
121.75(b)	119.43 (a) and (b).
121.77(a)	119.41(a).
121.77(b)	119.41(c).
121.77(c)	119.41(d).
121.79(a)	119.51(a).
121.79(b)	119.51 (b) and (e).
121.79(c)	119.51(c).
121.79(d)	119.51(d).
121.81(a)	119.59(a), (b), and (c).
121.83	119.47(b).
Part 135:	
135.5	119.31; 119.33(a), (b), and (c).
135.7	119.5(g).
135.9(a)	119.61(a).
135.11(a)	119.35 (a) and (b).
135.11(b)	119.49(a).
135.11(b)(1)	119.37(a), (b), (c), (d), (e), (f), and (g); 119.39(a); 119.49 (b) and (c).
135.13(a)	119.33(a), (b), and (c).
135.13(a)(2)	119.39(b).
135.13(a)(3)	119.5(i).
135.13(b)	119.39(b).
135.15(a)	119.41(a).
135.15(b)	119.41(b).

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119—Continued

	Replaced by
135.15(d)	119.41(d).
135.17(a)	119.51(a).
135.17(b)	119.51(c).
135.17(c)	119.51 (d) and (e).
135.17(d)	119.51(b), (d), and (e).
135.19	119.58.
135.27(a)	119.47(a).
135.27(b)	119.47(b).
135.29	119.9(a).
135.31	119.5.
135.33	119.5(j).
135.35	119.61(c).
135.37(a)	119.69(a).
135.37(b)	119.69(b).
135.37(c)	119.69(e).
135.39	119.69(d).
135.39(a)(1)	119.71(a).
135.39(a)(2)	119.71(b).
135.39(b)(1)	119.71(c).
135.39(b)(2)	119.71(d).
135.39(c)	119.67(c); 199.71(e).
135.39(d)	119.67(e); 119.71(f).
135.63(a)	119.59(b).
135.63(a)(2)	119.43 (a) and (b).
135.73	119.59 (a) and (b).
135.81	119.49(d).
SFAR 38–2:	
Section 1(a)	119.1(b).
Section 1(a)(3)	119.5 (d) and (e); 119.5(h).
Section 1(b)	119.5(f).
Section 1(c)	119.5(g); 119.31; 119.33 (a), (b), and (c).
Section 2(a)	119.5(a); 119.31; 119.33 (a), (b), and (c).
Section 2(b)	119.5(b); 119.31; 119.33 (a), (b), and (c).
Section 2(c)	129.1.
Section 3	119.7(a); 119.33 (a), (b), and (c).
Section 4(a)	119.21(a).
Section 4(b)	119.21(b).
Section 4(c)	119.25 (a) and (b).
Section 4(d)	119.25 (a) and (b).
Section 5(a)	119.23(a).
Section 5(b)	119.23(b).
Section 5(c)	119.25 (a) and (b).
Section 5(d)	119.25 (a) and (b).
Section 6	119.3.

VII. Discussion of Comments Related to Costs and Benefits

This section of the preamble discusses those costs and benefits related comments submitted to the docket for the NPRM. The comments are presented by topic within their respective areas of concern.

1. Operations

Flight Time Limitations. A commuter operator from Alaska voiced its concerns about the potential high cost ($502,000) of compliance associated with the proposed requirement for flight time limitations. According to this operator, compliance with the proposed rule would require hiring an estimated 15 to 75 percent more pilots, depending on the location of its operations in Alaska. Also, there would also be additional costs incurred for training.

FAA Response: The FAA is holding in abeyance a decision concerning flight time limitations because of a new proposal that, if adopted, would overhaul all of the flight and duty rules.

Dispatchers. There were a number of comments submitted on the establishment of a dispatcher system. However, none of the comments were directly related to costs. Among those comments related to costs, the primary concern pertained to the idea that there would be significant costs incurred by operators in remote areas (i.e., most of Alaska) or those operators with a small number of airplanes (fewer than five).

FAA Response: There are four points to make in reference to the comments. First, the commenters failed to provide any specific cost information to substantiate their claims of incurring significantly high compliance costs for establishing a dispatch system. Second, it is the FAA's position that nearly all part 135 commuters already have the basic communication equipment needed for a dispatch system because they already have flight locators and flight followers conducting some degree of operational control. Third, even in remote areas carriers have access to contracted communications systems. Fourth, in regard to the personnel costs associated with the dispatch system, these operators are expected to upgrade most of their existing flight locators and flight followers to be dispatchers, at an hourly wage increase of $1.60 (or $4,193 annually). Some dispatchers will be hired outside of the company at an

annual wage of $24,000. This position is based on information obtained from the Aircraft Dispatchers Federation (ADF) and a survey of several part 135 operators with dual operations specifications (parts 121 and 135). The FAA estimates a cost of $13,000 as the average minimum annual operating cost of establishing a dispatch system (assuming nothing is in place by a particular operator). This includes costs for telephone service, office space, office furniture, access to a current weather service, and access to air-ground communications.

Pilot Qualifications. Several commenters are opposed to the proposed requirements for pilot qualifications on the basis of an anticipated high cost of compliance.

FAA Response: The final rule does not contain requirements for crewmember training and pilot qualifications. These requirements are contained in a separate rulemaking action that pertains to operators under parts 121 and 135.

Cockpit Protective Breathing Equipment (PBE). One airplane manufacturer questions the need for fire-fighting PBE on the flight deck of commuter airplanes with 10 to 19 passenger seats. The commenter asserts that it would cost an additional $23,800 dollars (rather than the FAA's cost estimate of $400 per PBE unit) to equip each one of its 10-to-19-seat airplanes with such PBE on the flight deck. This cost estimate does not include a one-time $52,000 for development costs. According to the commenter, its airplanes are already equipped with fixed smoke-and-flame protection PBE at each of the two pilot stations. Thus, the only potential cost would be for a fire-fighting PBE on the flight deck.

FAA Response: The FAA has decided to drop the proposed requirement for fire-fighting PBE on the flight deck of affected airplanes with 10 to 19 seats.

Costs of Compliance—All Items. According to one commenter, the FAA's analysis grossly underestimated costs. The cost of the proposed rule should be $1.6 billion instead of the FAA's estimate of $275 million.

FAA Response: The FAA disagrees with the commenter. The FAA contacted the commenter to acquire information on the methodology and basic assumptions or rationale used to derive the cost estimate. With regards to the methodology, the commenter indicated that he used his own judgment and information provided by other commenters. None of his analysis was supported empirically by outside sources or seemed to be more credible than that used by the FAA. As to the basic assumptions, the commenter said there was no documentation that detailed the methodology used to derive his cost estimate of $1.6 billion. Therefore, since the commenter was unable to substantiate the cost estimate, the FAA will retain its cost estimate and all associated methodology.

2. Cabin Safety

First Aid and Medical Kits. Several commenters provided cost estimates ranging from $1,500 to $2,000 per airplane for the first aid and medical kit requirement, but these cost estimates were submitted without any detailed documentation. An additional commenter, who was contacted, agrees with the cost per first aid kit, but argues that the turnover rate should be 100% a year due to pilfering.

FAA Response: The cost estimates provided by the commenters are higher than the FAA's original estimates. The FAA based the equipment costs on off-the-shelf prices that would be available to all operators. The FAA contacted one commenter that estimates the cost of $1,500 per airplane for a first aid kit. The commenter's cost estimate includes up front costs such as the engineering designs, administrative paperwork, cost of tooling, as well as the cost of equipment and materials. The FAA assumes that the first aid kits, as well as medical kits, can be secured with Velcro tape and would be secure enough to meet the 18–G requirement. As to design and administrative costs involved with securing first aid and medical kits, the FAA is using the up-front costs of $1,500 submitted by the commenters. With regards to pilferage, none of the large airlines complain about first aid kits being stolen, and the FAA believes that if any kits are stolen, air carriers would take positive steps to stop such activity.

Locking Cockpit Door and Key. Several commenters are concerned that some locking cockpit doors would have to be retrofitted to work with a key, but cost estimates are not provided.

FAA Response: The FAA acknowledges that the commenters correctly state that keyless locks on affected lockable cockpit doors would have to be retrofitted to work with keys. Based on information from FAA technical personnel, the FAA is assuming that all of the 20-to-30-seat airplanes would have their locks or doors retrofitted, at a total cost of $182 per retrofit ($100 equipment + $82 labor).

Flotation Cushions and Life Vests. One commenter opposes the requirement because of the equipment cost and weight penalty. This commenter states that the seat cushions in the METRO airplane would not serve as effective flotation devices. In addition, this commenter provides a cost estimate for acquiring and retrofitting individual flotation devices for METRO airplanes.

FAA Response: The FAA concurs that if the seat cushions in a particular airplane model do not serve as flotation devices, then individual flotation devices would have to be acquired. Also, the FAA verified the commenter's cost estimate and has incorporated it into the regulatory evaluation for the final rule.

Halon Fire Extinguishers. One commenter from Alaska provides an aggregate cost estimate for the required halon fire extinguishers which was substantially higher than the estimate in the NPRM. The commenter does not provide additional commentary on the requirement beyond the costs.

FAA Response: The FAA partially disagrees with this commenter. A one-time cost estimate to account for up-front administrative and engineering costs to comply with Type Data Certificates was submitted by the commenter. The FAA verified this cost-estimate and has incorporated it into the cost of the final rule. However, the FAA contends that there would be no major retrofit costs because the halon fire extinguishers would replace existing fire extinguishers with the same size canister. The FAA's equipment costs were based on off-the-shelf prices for halon which would be available to all operators.

Carry-on Baggage. A commenter from Alaska believes that the FAA's cost estimate for the carry-on baggage screening program implementation is too low. This commenter reasons that the wage rates and paperwork burden would be higher for the Alaska air carriers. In addition, the commenter strongly objects to applying the scanning program at locations that do not have terminal facilities. This commenter believes that each operator will need to develop a measurement device to check each item of carry-on baggage which will result in delays. All of this will cost $156,000 per year for each Alaskan commuter air carrier; there is no detailed explanation of what this entails. Another commenter, who was contacted, believes that for crewmembers to enforce the carry-on baggage program will delay each flight one minute; this flight delay will need to be costed out.

FAA Response: The FAA disagrees with these commenters. The FAA is unable to evaluate the Alaska commenter's cost estimate without a

detailed explanation of the cost breakdown. However, it is important to note that the wage rate and the paperwork hours assumed in the NPRM were national averages, so these numbers could be higher in some parts of the country, like Alaska, and lower in others. In addition, no carrier would be required to have a measuring device to carry out this program; the baggage screening program is visual in nature, and the requirements and costs involved only refer to preparing baggage screening procedures for the carrier's operations manual and an addendum to the Operations Specifications. Finally, the FAA does not believe that there would be delays on any flights due to such a program as crewmembers would be ''eye balling'' carry-on baggage as passengers are boarding at the same speed they have always boarded.

Flight Attendants at the Gate. A commenter believes that all operators would only use trained, authorized, substitute personnel when coverage is needed. This commenter believes that these trained persons would all be new hires and paid annual salaries of $12,000. One commenter from Alaska opposes the requirement for flight attendants at the gate. The commenter states that both crewmembers on the 10-to-19 seat airplanes would need to assist in the loading and unloading process, and hence neither could stay on board with passengers. Furthermore, the commenter states that deplaning passengers would not be a viable option because airports in Alaska do not have the proper facilities. Therefore, the commenter states that a trained substitute would have to stay on board the airplane with the passengers 100% of the time. The commenter states that the FAA has also underestimated the training costs and wage costs so that this requirement would cost about $2.9 million each year for all of the Alaska commuter air carriers to comply.

FAA Response: The FAA disagrees with these commenters. The authorized personnel would need to be trained, reliable, and have a low turnover rate; an annual salary of $12,000 would not be high enough to attract such people. These airplanes typically fly only during the summer months so passengers can be deplaned. The FAA contends that one of the crewmembers can stay on board the airplane some of the time; loading and unloading responsibilities can often times be accomplished with one crewmember. The final rule has been changed to allow a crewmember to stay on or in close proximity to the airplane to comply with this requirement. The FAA does not believe it is likely that air carriers in Alaska would have trained substitute personnel waiting at each intermediate stop. Accordingly, the FAA believes that Alaskan air carriers would either deplane passengers or use a crewmember.

Passenger Information. One commenter from Alaska disagrees with the FAA's cost estimate for passenger information cards and believes that it is too low. Alaskan air carriers would need to devise a more comprehensive information system due to the many nationalities and native languages in Alaska and this would entail great expense. Some air carriers would also have to translate into Japanese, Korean, and Russian for tourists from the Pacific Rim nations. The commenter also thought that the FAA's assumption of a three year life expectancy for information cards was too high. Based on experience, the commenter states that information cards last less than a year due to wear and theft. The commenter also estimates costs of $26,000 for Alaskan commuter air carriers in the first year and $4,224 each year thereafter.

FAA Response: The FAA disagrees with this commenter and believes that the commenter misunderstood the requirements of this proposed section. There is no current or proposed requirement to translate any passenger information cards into any other language. In addition, the industry average for passenger information cards is three years, so the FAA will use the NPRM costs.

3. Certification

Performance Criteria. Of seven comments received, only one manufacturer provided cost information. This manufacturer reports that, for their part 23 commuter category certificated airplanes, there would be no compliance costs. However, for their SFAR 41C certificated airplanes, developing the data needed to comply with the part 121 requirements for obstacle clearance and for accelerate-stop would be $3,000 per airplane for obstacle clearance and $2,500 per airplane for accelerate stop. For their pre-SFAR 41C airplanes, it would be $63,000 per airplane to develop performance data for obstacle clearance and $145,000 per airplane to develop anti-skid data, to purchase and install anti-skid systems, and to incur the 35 lb. weight penalty for accelerate-stop.

FAA Response: In the Notice, the FAA stated that all part 135 scheduled airplanes would be able to meet these performance criteria and that the only cost would be a $5,000 per type certificate to provide the data and obtain FAA approval for inclusion into the airplane flight manual. After additional review, however, the FAA realizes that SFAR 41 and predecessor category airplanes will be unable to meet all of the part 121 performance criteria without having to offload so many passengers or cargo as to become unprofitable to operate in scheduled passenger service. If operators substitute airplanes configured with 9 or fewer passenger seats for these airplanes, there could be a substantial economic loss and potential safety reduction. Thus, the FAA will allow the operators of these airplanes to have 15 years to meet the part 121 performance requirements. This will allow operators sufficient time to plan for the replacement of these airplanes without incurring an enormous economic loss. It also will allow manufacturers time to develop better substitutes for these airplanes.

Engine-Out-En-Route-Net-Flight Data. There were three commenters on this issue. One manufacturer commenter reports a one-time cost of $24,774 to create the required one-engine-inoperative-en-route-net-flight-path data which do not exist for any 10-to-19-seat airplanes. Another commenter reports that these flight data are not included in the FAA approved airplane flight manual.

FAA Response: The FAA concurs with these commenters and has adopted the commenter's cost estimate.

Cargo Compartment Smoke Detector and Fire Extinguishing Systems and Cargo Compartment Liners. Two commenters report a per-airplane cost of $15,230 to $15,580 to install smoke detectors and fire extinguishers in the cargo compartments of newly-manufactured 10-to-19-seat airplanes. The commenter also reports a per-airplane-retrofitting cost of $17,420; a one-time cost of $85,400 for engineering, designing, testing, and paperwork for FAA approval; and 32 lbs. of added weight to each airplane. The commenter also reports a per-airplane cost for cargo and baggage compartment liners of $13,000 for a retrofit; $10,420 for a newly-manufactured airplane; a $463,950 cost for a one-time engineering, designing, testing, and paperwork to obtain FAA approval cost; and 9 lbs. of additional weight. Another commenter reports a per airplane cost of $26,400 and a weight of 15 lbs. This commenter also notes that the NPRM did not propose any retrofitting.

FAA Response: The FAA disagrees with the commenter. The FAA proposal would only apply to newly-manufactured airplanes beginning four years after the effective date. Thus, there

would be no retrofit costs. (After additional analysis, the FAA has decided that this topic needs to be specifically addressed in a separate rulemaking. Thus, there would be no compliance costs for this in the commuter rule.)

Landing Gear Aural Warning. Two manufacturers and one operator report that all of their 10-to-19-seat airplanes have aural landing gear warnings. Two of these commenters report no compliance cost. The other commenter reports a one-time manufacturer's cost of $2,620 to obtain FAA approval of the flight-manual changes.

FAA Response: The FAA disagrees with the commenter who reported a one-time cost because the presence of the aural warning device in existing airplanes means that this equipment was already included and approved in the airplane flight manual. As the FAA believes that all affected airplanes already employ an aural warning system, there are no compliance costs.

Ditching Approval. There were five commenters who addressed this issue. One commenter reports a $7,430 cost for its DeHavilland Twin Otters to comply with this provision. Another commenter reports that it would be impossible for the Twin Otter to comply with the ditching requirement due to its fixed landing gear; also the commenter says that other airplane operators would incur a $180 per airplane paperwork cost to demonstrate compliance. Another commenter reports that the costs would be extremely high. Two commenters report that there would be a $1,500 one-time paperwork cost to demonstrate compliance to the FAA for revision of the approved flight manual.

FAA Response: The FAA agrees with the commenters. For the final rule, the compliance period will be extended to 15 years. Thus, the potential cost of compliance will be minimal.

Take-Off Warning System. One manufacturer reports that the per airplane cost to install take-off warning devices would be $24,920 on a newly-manufactured airplane; $26,500 for a retrofit; and $150,260 for a one-time engineering, development, testing, and FAA-approval cost. Also, these devices would weigh 5 lbs. Another commenter reports that it would cost $12,600 per airplane to install a 2 lb. take-off warning device on a newly manufactured airplane. One commenter reports that it would cost $11,350 per airplane to install a take-off warning device on a newly manufactured airplane.

FAA Response: The FAA estimates that the per airplane cost for a newly manufactured airplane would be $16,000 for engineering, developing, testing, and installing, plus an annual $1,600 inspection, maintenance, and repair cost. The FAA also did not estimate any additional weight for this device. However, after further technical review, the FAA concludes that none of these airplane models (except the Beech 99) would need a takeoff warning system because a takeoff with a device in the most adverse position does not create a hazardous condition. For the Beech 99, that problem was resolved when the FAA issued an Airworthiness Directive (AD) requiring these airplanes to install a takeoff warning system. Thus, there are no compliance costs associated with this requirement.

Third-Attitude Indicator. Two commenters report that there would be no compliance cost for newly-manufactured airplanes because third attitude indicators are standard equipment. One of these commenters reports that there would be a $1,500 one-time manufacturer's paperwork cost to obtain FAA approval to changes in the flight manual. The same commenter reports that it would cost $10,865 to retrofit an airplane. The other commenter reports that the per-airplane-retrofit cost would be between $40,600 for a Beech 1900C and $48,800 for a Beech 99, and that a third-attitude indicator would weigh 15 lbs. An airplane operator reports that it would cost $40,000 per airplane to retrofit its Beech 1900Cs. Another airplane operator reports that it would cost $17,000 per airplane to retrofit its DeHavilland Twin Otters. Finally, a commenter reports that it would cost $53,170 per airplane to retrofit airplanes. In addition to the reported costs, the commenter states that there was insufficient time for operators to retrofit these airplanes within the one-year period proposed by the NPRM.

FAA Response: The FAA estimates that the per airplane cost would be $16,000 for a retrofit and $8,000 for a newly-manufactured airplane. The annual maintenance, inspection, and repair costs would be 10 percent of the retrofitting costs. The third-attitude indicator and wiring would weigh 5 lbs. Based on the manufacturer information, this device has been installed on all turbo-jet and commuter category airplanes.

The FAA contends that its cost estimates in the NPRM are valid. However, the FAA accepts the comment that the additional weight would be 15 lbs. After additional analysis, and in light of the potential high-costs of this proposal, the FAA believes that this requirement should be handled consistently with the principle espoused in the performance requirements. On that basis, the final rule will have a 15-year retrofit compliance period for affected 10–19 seat airplanes and predecessor category.

Lavatory Fire Protection. Concerning 10-to-19 seat airplanes, two manufacturer commenters state that very few of their airplanes had lavatories. For those few that do, one manufacturer reports that installing a lavatory smoke detector and a built-in automatic fire extinguisher in each lavatory-waste receptacle would cost $59,200 per retrofit, $8,800 for a newly manufactured airplane, and would weigh 10 lbs. The other commenter reports it would cost $8,350 for a retrofit, $7,800 for a newly-manufactured airplane, involve a one-time engineering cost of $49,000, and would increase each airplane's weight by 16 lbs. Another commenter reports that a retrofit would cost $725.

Concerning 20-to-30-seat airplanes, two manufacturer commenters report that it would cost $4,000 to retrofit their airplane lavatories. One of these commenters also states that only one half of the newly manufactured airplanes with lavatories have these devices. Two airlines and one association report that it would cost $2,500 to retrofit their airplane lavatories. One of the airlines reports that these devices would weigh 20 lbs.

FAA Response: Section 121.308(a) requires each lavatory to have a smoke detector system connected to either: (1) A warning light in the flight deck; or (2) a warning light or an aural warning in the passenger cabin that can be readily detected by a flight attendant. Section 121.308(b) requires each lavatory to have a built-in automatic fire extinguisher in each waste-disposal receptacle in the lavatory. These requirements are also found in section 25.854 but only for airplanes type certificated after 1991. There are no similar provisions in part 135 or part 23.

In reviewing these comments for the 20-to-30-seat airplanes, the FAA believes, although these commenters did not document the sources for their estimates, that these estimates appear to be based on the cost of a flight deck warning light system, which would involve some airplane rewiring. However, the FAA's estimate is based on the operator electing the second option allowed in the proposed rule—an aural warning device that could be heard by the flight attendant. That option is clearly the cost-effective option for 20-to-30-seat airplanes that are required to have a flight attendant.

These provisions are largely unimportant for the 10-to-19-seat

airplanes because very few have a lavatory. In fact, one manufacturer reported that none of their airplanes operating in the U.S. has one. The FAA believes that the reported costs for these individual airplanes are so large because any costs to engineer, design, and test would be distributed over so few airplanes. However, for those few 10-to-19-seat airplanes that do have a lavatory, the FAA changed this rule to allow an aural warning system that can be heard by the flight crew. On that basis, the FAA determined that it would cost about $175 to retrofit or to install in a newly manufactured airplane a 5 lb. aural smoke detector that requires $50 a year in maintenance and inspection and $15 a year for replacement batteries. The FAA also determined that it would cost $300 to retrofit a 5 lb. receptacle automatic fire extinguisher that requires $75 a year in maintenance and inspection and $50 a year for recharging. These costs are $50 a year more than the costs estimated in the NPRM.

The FAA also estimates that half of the 272 existing 20-to-30 seat airplanes certificated before 1991 did not have these devices whereas 90 percent of the newly-manufactured airplanes have them. The FAA accepts the commenter's statement that only half of these newly-manufactured airplanes have these devices.

Emergency Exit Marking. One manufacturer reports that installing an emergency exit marking light would cost $11,050 for a retrofit, $9,100 for a newly manufactured airplane, and would involve a one-time manufacturing cost of $87,280 to engineer, design, test, and obtain FAA approval for this device.

FAA Response: The cost of this provision was a part of the FAA's estimated emergency lighting cost. After additional analysis, the FAA believes that given the passenger's close proximity to emergency exits and the high cost of complying with the lighting requirements, affected airplanes will not be required to comply with certain lighting provisions in 121.310.

Floor Proximity Lighting. One manufacturer commenter reports that installing emergency floor proximity lighting would cost between $27,600 and $36,000 for a retrofit, $20,800 for a newly manufactured airplane, and the installed lighting would weigh 12 lbs. A second manufacturer commenter reports that it would cost $19,000 for a retrofit; $15,000 for a newly manufactured airplane; there would be a one-time engineering, developing, testing, and obtaining FAA approval cost of $52,650, and the installed lighting would weigh 10 lbs. This commenter also proposes an alternative interior lighting of the exit and exterior emergency exit lighting as a substitute for the full-scale floor proximity and exterior emergency exit lighting in the NPRM. This alternative lighting system is required for their airplanes in Great Britain. But this commenter did not report the cost of their proposed alternative. A third manufacturer commenter reports that it would cost $8,000 for a retrofit. One air carrier commenter reports that it would cost about $17,700 to retrofit its DeHavilland Twin Otters. Another air carrier commenter reports that it would cost $26,800 to retrofit its Beech 1900Cs and $22,800 to retrofit its Jetstream 31s and Beech 1900Ds. One association reports that it would cost between $20,000 and $50,000 for a retrofit. A second association reports it would cost $11,000 for a retrofit. A third association reports it would cost $19,000 for a retrofit. Finally, an aviation consultant group reports it would cost $8,000 for a retrofit.

FAA Response: The FAA estimates that the cost to comply with the emergency lighting requirements in 121.310 would be $2,500 to retrofit existing airplanes and $2,000 to install in newly-manufactured airplanes. After additional analysis, the FAA agrees with these commenters that the earlier FAA costs severely underestimated the retrofitting and new installation costs. As a result, the FAA determines that 10-to-19-seat airplanes would not be required to meet these lighting requirements in 121.310.

Emergency Exit Exterior Lighting. One manufacturer commenter reports that the per airplane cost would be $13,400 to install a 15 lb. emergency exit exterior lighting system on a newly manufactured airplane and $17,950 for a retrofit. In addition, they report a one-time engineering, design, testing, and paperwork for FAA approval cost of $64,525. However, as noted in the previous section, their suggested alternative to floor proximity lighting would also contain an exterior emergency lighting capability. Another manufacturer commenter reports that the per airplane cost would be $11,800 to install a 12 lb. emergency exit exterior lighting system on a newly manufactured airplane and $17,250 to $23,550 for a retrofit. One air carrier reports that it would cost $9,400 per airplane to retrofit its DeHavilland Twin Otters. Another air carrier reports that it would cost $16,640 to retrofit its Beech 1990Cs, 1900Ds, and its Jetstream 31s.

FAA Response: The FAA provided one aggregated cost estimate for the emergency lighting system. However, as that total cost estimate for all lighting required by Section 121.310 was $2,500, the FAA reevaluated its exterior-lighting-cost estimate. After additional analysis, the FAA agrees with these commenters that the earlier FAA costs severely underestimated the retrofitting and new installation costs. As a result, the FAA determines that 10-to-19-seat airplanes would not be required to meet these lighting requirements in 121.310.

Exterior Emergency Exit Marking. One manufacturer commenter reports that it would cost between $350 and $650 for an airplane operator to install these markings on the exterior of the emergency exits. One association commenter reports that it would cost $74 to install these markings. Neither commenter discusses the number of airplanes that would need to have these markings installed.

FAA Response: The FAA estimated that about 10 percent of the 10-to-19-seat airplanes would need to comply with this requirement at a cost of $100 per airplane. However, the FAA notes that this section is identical to Section 135.178(g). As a result, there are no compliance costs.

Pilot Shoulder Harnesses. One manufacturer commenter reports that even though all of their airplanes are now manufactured with the single point pilot shoulder harness, they would still incur a $22,500 one-time cost—presumably to obtain FAA approval for inclusion in the flight manual. One association commenter reports that it would cost $440 to retrofit a single point shoulder harness.

FAA Response: The FAA did not estimate any cost for this provision because the proposal did not require retrofitting and the FAA was informed by industry that the single point inertial harness for pilots is standard equipment on all currently-manufactured airplanes. Thus, the FAA determines that there is no compliance cost.

The FAA disagrees with the commenter who reported a one-time manufacturer's cost because this equipment is already in airplanes and, hence, approved in the airplane flight manual.

Interior Panel Heat and Smoke Release Standards. There were two commenters on this issue. One manufacturer commenter reports that the per airplane cost for requiring the more stringent fireproofing material for cabin interiors would be $77,550 for a retrofit, $67,500 for a new installation, and there would be a one-time engineering, designing, testing, retooling, and obtaining FAA approval cost of $627,910. Another manufacturer commenter reports that it would cost

$90,000 per airplane to install in a newly manufactured airplane and also notes that the Notice did not propose a retrofit. It should be noted that the commenter's methodology averages any one-time engineering and development costs into the expected number of future sales of the Beech 1900D.

FAA Response: The FAA disagrees with the commenters. Manufacturers would only have to comply with the existing type-certification standard. Therefore, there would be no compliance cost.

Passenger Seat Cushion Flammability. There were eight commenters on this issue. One manufacturer commenter reports that the per airplane cost would be $11,250 to retrofit one of its airplanes with fire-blocked-seat cushions; $10,250 per airplane to install in a newly manufactured airplane; there would be a one-time engineering, design, testing, and FAA-approval costs of $85,415; and it would add 20 lbs. A second manufacturer commenter reports that the per airplane cost would be between $20,000 and $22,600 for a retrofit; $3,400 in newly manufactured airplanes; and would weigh 38 lbs. One air carrier reports that the per airplane cost would be $12,600 to retrofit its Beech 1900Cs and $4,000 to retrofit its Beech 1900Ds and Jetstream 31s. Another air carrier reports that the per airplane cost would be $35,000 to retrofit its DeHavilland Twin Otters. Another air carrier reports that the per airplane cost would be $20,000 to retrofit its fleet. Three associations report that the per airplane retrofitting costs would range from $20,000, $42,950, and $50,000.

FAA Response: The FAA estimated that the per-airplane-incremental cost would be $20,000 to retrofit fire-blocked-seat cushions, $5,000 to install these seat cushions on newly-manufactured airplanes, and $10,000 to replace these seat cushions on airplanes that have fire-blocked-seat cushions. An additional cost would be the 38 lbs. of weight these seats add to the airplane. The FAA acknowledges the fact that different airplanes would have different retrofitting and new installation costs.

After additional analysis, the FAA accepts the manufacturer commenters' cost estimates for their airplanes as well as accepts the air carrier estimates provided for the DeHavilland Twin Otter and the Jetstream 31. For the other types of airplanes that would need to be retrofitted, the FAA uses an average of these reported retrofitting costs weighted by the number of each type of this airplane still in service. The FAA also accepts the commenters weight estimates for each of their own airplanes. After additional analysis, the FAA finds that, for the final rule, a 15-year compliance period is appropriate for 10-to-19-seat airplanes.

''Fasten Seat Belt'' Lighted Sign. There were two commenters on this issue. One manufacturer reports that installing a fasten seat belt light would cost between $3,025 and $4,000 for a retrofit and $1,600 for a newly manufactured airplane. One association reports that it would cost $11,000 per airplane.

FAA Response: The FAA had not estimated any compliance costs for section 121.317(b) because it was believed that commuter airplanes had these signs. However, after additional analysis, the FAA determines that a placard and a pre-flight briefing provide an equivalent level of safety to a lighted sign. As these are industry practices, there is no compliance cost.

Wing Ice Light. There were two comments on this issue. One manufacturer reports that there would be no compliance costs for any of their airplanes. One association reports that it would cost $11,000 to install wing ice lights on its members' airplanes.

FAA Response: In the Notice, the FAA did not estimate any costs for this provision because the provision states ''No person may operate an airplane in icing conditions at night unless means are provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation.'' The FAA holds that all of the airplanes have either the wing ice lights or an acceptable alternative method for determining the icing accumulation on the wings. As a result, there is no compliance cost.

Pitot Heat Indication. There were five commenters on this issue. One manufacturer reports that the per-airplane cost would be $9,250 to retrofit pitot heat indication tubes, $10,600 to install on a newly-manufactured airplane, there would be a one-time cost to apply, engineer, design, and test of $31,670; and it would weigh 4 lbs. Another manufacturer commenter reports that it would cost between $3,000 and $5,700 per airplane to retrofit its models no longer in production and it would weigh 1 lb. This commenter also reports that all of its currently manufactured airplanes have pitot heat indication systems. One air carrier reports it would cost $1,650 to retrofit its DeHavilland Twin Otters with pitot heat indication tubes. One association reports that it would cost its members $11,000 per airplane for a retrofit while another association reports that it would cost its members between $1,500 and $25,000 per airplane for a retrofit.

FAA Response: Based on information contained in the Draft Regulatory Evaluation to the FAR/JAR Harmonization, the FAA had estimated that the per airplane costs would be $500 for a retrofit and $250 for a newly-manufactured airplane. After review of these comments, the FAA has revised these cost estimates to $4,000 for a retrofit, $2,000 for installation on a newly manufactured airplane, and an additional 5 lbs. of weight to the airplane.

Power Distribution System. One commenter reports that Section 121.313(c) requires a power supply and distribution system that meets the requirements of six sections of Part 25. They state that this would require a major redesign of their airplanes' electrical power distribution system. They report a per airplane cost of $15,605 for a retrofit, $12,660 for a newly manufactured airplane, and a one-time engineering, design, testing, and paperwork for FAA approval of $156,256.

FAA Response: The FAA disagrees with this commenter. They did not notice that the further text in part 121.313(c) reads ''* * * or that is able to produce and distribute the load for the required instruments and equipment, * * *'' The requirement allows the use of a power supply and distribution system that has been shown to perform its functions. Thus, compliance can be established by means other than part 25. As a result, there are no compliance costs.

Out-of-Service Time to Install Airplane Equipment. Four commenters note that the FAA failed to include the cost for the additional out-of-service time that will be needed to install all the equipment required to comply with the proposal. Although no exact costs were provided, these commenters assert that this time out of service would result in a substantial revenue loss.

FAA Response: Even though the FAA attempted to design the proposed rule to minimize out-of-service time, the agency agrees with these commenters that there would be some out-of-service time for some of the affected airplanes. However, as a result of the changes from the NPRM to the final rule, the FAA contends that all of the required equipment by the final rule can be installed during regularly scheduled maintenance and there will be no additional out-of-service time.

4. Maintenance

The Alaska Air Carriers Association (AACA), citing the uniqueness of the

Alaskan operating environment and the absolute necessity of air travel in Alaska, notes that most Alaskan operators utilize mixed fleets and employ maintenance personnel who work on all airplanes in such mixed fleets. The AACA maintains that requiring the scheduling of maintenance personnel according to part 121 standards would place an additional administrative burden and financial compliance cost on air carriers at locations with limited personnel and mixed fleets. The AACA contends that the part 121 specification of maintenance personnel duty time limitations would require the air carrier either to develop and apply separate work schedules for part 121 and part 135 mechanics or to hire additional mechanics.

FAA Response: With few exceptions, the FAA agrees with the commenters. Part 121 requires 24 hours off during any 7 consecutive days; part 135 makes no such provision. In its original assessment of maintenance and preventive maintenance personnel duty time limitations, the FAA assumed the issue to be non-controversial; the existence of union work rules, Department of Labor regulations and the generally accepted notion of a ''day of rest'' were believed to be sufficient to accomplish the same result. As a consequence, the FAA did not assess any costs associated with the burden of scheduling and providing a day of rest for part 135 mechanics as is required under part 121 where operators must ensure adequate rest for their mechanics.

The FAA maintains that mechanics, similar to pilots and flight attendants, must receive adequate rest in order to perform their duties properly and that the minimum standard required under part 121 would ensure that the opportunity for rest is provided. The FAA, however, concurs with the AACA that the extending of duty time limitations to the Alaskan operators of mixed fleets utilizing maintenance personnel under both parts 121 and 135 would be an additional cost burden. Therefore, based on cost information provided by the AACA, the FAA has adjusted its original maintenance cost estimates accordingly. The adjustment is two-fold: 1) the full cost burden inclusive of potential added labor costs were estimated for Alaskan 10–19 seat category air carriers; and 2) the administrative maintenance personnel scheduling costs without the labor cost factor were estimated for the remainder of the 10-to-19-seat non-Alaskan commuter fleet as well as the 20-to-30-seat commuter fleet.

Maintenance Recordkeeping Requirements (Recording). The AACA also criticizes the FAA's estimate of a one-time cost for compliance with the commuter rule's maintenance provisions. The AACA maintains that the one-time cost is underestimated and that there would be on-going maintenance recordkeeping costs.

FAA Response: The FAA concurs and has adjusted its original maintenance cost estimates accordingly. In this instance, however, the FAA has apportioned the added required maintenance recordkeeping costs between 10-to-19-seat and 20-to-30-seat airplanes for the total domestic commuter industry.

Maintenance Recordkeeping Requirements (Records Transfer). One commenter objects to the proposed change requiring engine and propeller total time in service to be added to the list of required recorded items. Typically, under part 121, only the total hours in service of an airplane's airframe is transferred information on older airplanes because operators have not been required to retain engine and propeller time in service data. According to the commenter, this change would necessitate operators of older 121 airplanes to undergo an extensive search of maintenance records to determine the historical times on the engine and propeller if such data is available at all.

FAA Response: The FAA concurs with the commenter. The adoption of part 135 wording imposes the more comprehensive part 135 maintenance recording requirements on part 121 operators and this might require an extensive search of maintenance records with some additional cost to an operator of older part 121 airplanes. The FAA, however, believes that any additional cost as a result of such a search would be minimal and has been taken into account with the cost adjustment provided under the maintenance recordkeeping requirements for recording addressed in an earlier comment. The FAA believes that the additional cost would be minimal because only seven existing part 121 operators of older propeller-driven airplanes would be affected by the new requirement. Typically, most part 135 operators utilizing propeller-driven airplanes already retain engine- and propeller-total-time-in-service data and most part 121 operators utilize jet-driven airplanes.

Continuous Airworthiness Maintenance Program (CAMP). One commenter estimates that the cost associated with the CAMP was considerably greater ($1.6 million) relative to the FAA's estimate to develop or revise and upgrade the CAMP ($105,000) as a result of the commuter rule.

FAA Response: The FAA does not concur with the commenter's estimate. The FAA maintains that nearly all operators of airplanes with 10-to-19- or 20-to-30-seat configurations regardless of whether operating under part 121 or part 135, are either conducting their scheduled maintenance under an approved CAMP or have adopted a CAMP as the basic guideline for their scheduled maintenance. As a consequence, the FAA based its original estimates on the cost associated with the minimum editorial changes to operators' CAMP's necessitated by the commuter rule.

The FAA however, has adjusted its maintenance cost estimates for recordkeeping requirements based on the comments already discussed and detailed above. The FAA believes the costs described by the commenter are costs associated with the new recordkeeping requirements, not administrative costs associated with the modifications to existing CAMP's.

5. Part 119

Single-Engine Airplanes. Several commenters state that the NPRM cost estimates for not allowing a passenger to sit in the co-pilot seat on a single-engine Otter are understated. One commenter states that the data the FAA used was based on national averages while all of the airplanes in question are located in Alaska. The commenters also state that the load factors and operating costs in Alaska are much higher than the rest of the country.

FAA Response: The FAA agrees with the commenters and will not prohibit qualified (as prescribed by § 135.113) single-engine airplanes, namely single-engine Otters, from carrying a revenue passenger in the copilot seat.

Proving Tests. Several commenters suggest that for operators who are switching from part 135 to part 121, the FAA should allow proving tests on revenue flights. Other commenters contend that since the airplanes they are using and the routes they are flying are not changing, the FAA should not require a proving test. Still other commenters state that the FAA's estimate of $437 hourly airplane operating costs was too low. (This rate includes crew, maintenance, and fuel costs.) The commenters' estimates range from $750 to $1,050 per hour versus the FAA's average estimate of $483 per hour for 20-to-30-seat airplanes and $463 per hour for 10-to-19-seat airplanes. Finally, some part 135 operators commented

that they already meet many of the part 121 requirements and should not have to have a proving test.

FAA Response: For most part 135 operators, the biggest affect the NPRM would have on them would be the establishment of a dispatch system. Thus, for some operators, the FAA could devise tests that would entail only limited in-flight proving tests. This could be done almost entirely from the operator's dispatch center. For the initial upgrade to part 121, the FAA will not require compliance with the initial airplane proving tests requirements of Section 121.163(a) for airplanes already used by the affected commuters in Part 135 operations.

As for the hourly airplane operating cost, some of the commenters provided hourly-charter rates. However, the cost of the rule would not necessitate that operators give up a revenue or charter flight to complete the proving test. Therefore, the cost of the rule would be only the direct operating cost of the airplane based on a direct operating cost rate and not the charter rate. The FAA's estimate was consistent with estimates provided by several airplane manufacturers.

Management Personnel. One commenter says that a number of their management personnel would not meet the new criteria and that they would have to hire all new personnel or a consultant. Other commenters argue that existing personnel should be ''grandfathered in'' under the final rule. Another commenter says that the requirement for part 121 operators that a director of maintenance have five years of experience within the past five years excludes people who may have not worked for an extended period during a job search.

FAA Response: The FAA contends that most currently employed directors meet the new standards. However, for those directors who do not, section 119.67(e) allows for operators to request deviation for the continued employment of those directors. The FAA anticipates that operators whose directors do not meet the new requirements would request deviation.

In addition, the FAA agrees that the five years experience within five years places an unnecessary burden on those directors who may have extended periods of unemployment within the five year period prior to being hired. Thus, the FAA is changing the requirement to three years of experience in the past six years.

Definition of Commuter Air Carrier. Several commenters disagree with the FAA's proposal to remove the frequency of operation from the definition of a ''commuter operations''. The existing requirement defines a commuter as one conducting five or more scheduled round-trips per week. This allows on-demand operators to conduct up to four scheduled operations per week. The commenters provide only general comments that the new definition would impose costs.

FAA Response: The FAA agrees with the commenters that the frequency of operations test in part 135 should remain.

6. Benefits

The comments received on the estimated benefits mostly pertained to the FAA's use of a general-accident-rate approach to estimating benefits. The commenters object to the FAA's use of a broad-based accident rate rather than identifying specific historic accidents that the NPRM could have prevented. Other commenters note that the FAA deviated from its usual method of calculating benefits. This method is to identify specific types of accidents (based on the historical record) that would be prevented by a corresponding requirement of the proposed rule. Also, commenters indicate that the commuter accident rate has been declining over the past several years thereby making much of the rule unnecessary. Finally, commenters note that most of the accidents involved pilot error, which is not being addressed by the NPRM.

FAA Response: The FAA agrees that most of the historic accidents involved pilot error. However, many of the pilot error accidents were the result of the pilot's improper response to an emergency situation. An example of this would be an accident where an airplane experiences some mechanical problem or adverse weather and the pilot fails to follow the appropriate corrective procedures to prevent the accident. Even if the accident could not have been prevented, the pilot may have reacted in such a way that the damage or casualties were not mitigated to the extent that they could have been.

The FAA used a general or broad-based accident rate because the scope of the NPRM was broad, encompassing a wide range of safety issues from certification, operations, cabin safety, maintenance, etc. Similarly, the types of accidents the NPRM would prevent are also broad, based on a wide range of probable causes of historic accidents. For most of the accidents, the FAA could not determine if any one requirement of the NPRM alone could have prevented or mitigated the accident. This made it very difficult to divide the various probable causes of the accidents to the various requirements that could have prevented them. Thus, for the NPRM, the FAA contends that a general broad based accident rate is more appropriate.

The FAA agrees that the historic accident rate for part 135 operators has declined. However, that rate is still consistently higher than commuter-type operations under part 121. In the NPRM, the FAA acknowledged that in some respects the part 135 accident rate is higher due to some inherent differences in part 135 and part 121 commuter-type operations. In other respects, the part 135 rate is higher because those operators follow a different and less stringent set of safety rules than part 121. The FAA contends that much of the gap in the accident rate could be closed if all commercial passenger-carrying operators adhered to the higher part 121 standards of safety.

7. Other Areas of Interest

Projected Ticket Prices. Several commenters state that the projected ticket price increases of $1.91 and $.68, respectively for 10-to-19- and 20-to-30-seat airplanes is far off. Commenters from Alaska presented the strongest disapproval of FAA's projected ticket-price estimates.

FAA Response: The FAA's cost estimates of $1.91 and $.68 were not far off because most of the commenters' higher costs claims did not have merit. Except for some commenters from Alaska, the FAA did not receive any direct-cost comments related to these two estimates. Since these two cost estimates were based on the total cost of compliance for the proposed rule, they would only change if there were a change in costs for the commuter rule.

The FAA reviewed all of the cost comments submitted on the proposed rule and rejected the vast majority of them due to the comments' failure to substantiate their claims of higher costs.

In terms of the comments received from Alaskan operators, the FAA agrees that their costs would be higher than $1.91 and $.68, respectively. It is important to note that these projected ticket price increases represent averages over the 10-year period. They are based on the cost of compliance for each of the 10 years, summed over the period, and divided by the number of years. Therefore, if particular operators were to incur disproportionate higher costs, they would be expected to pass those costs on, to the extent possible, in the form of higher ticket prices. Ticket price increases would be highest for all impacted operators during the first two to three years and decrease gradually thereafter.

After accepting some of the cost comments and making adjustments for changes in performance and certain equipment requirements, the commuter rule is estimated to cost $118 million (as opposed to $275 million in the NPRM). Based on this estimate, the average annual per ticket price increase for each of the two airplane-seat categories, over the next 15 years, will be far less than the original estimates.

VIII. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 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 this Final Rule will generate benefits that justify its costs and is ''a significant regulatory action'' as defined in the Executive Order. The FAA estimates, however, that the final rule will not have a significant economic impact on a substantial number of small entities. No part of the final rule will constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

A. Sections Without Cost Impacts

Those part 121 sections that the FAA has determined will not impose additional costs on part 135 commuter operators are not described in this summary evaluation. Each of those part 121 sections will not impose costs for one of the following reasons: (1) Current practice is identical or very similar to the new requirement; (2) the new requirement represents minor procedural changes; (3) the section determines general applicability and does not specifically impose any costs; or (4) certain requirements of part 135 would be incorporated into part 121 without change. Those part 121 sections without costs are described in the full evaluation under each of the areas for which they apply. While not shown in this summary evaluation, it is important to note that 10 of the sections in the final rule were identified as having negligible costs. These negligible costs, even when combined, will not be significant.

B. Sections With Cost Impact

The rule will impose costs on part 135 operators with 10-to-30-seat airplanes. The FAA estimates the total cost of the rule will be $117.80 million over the next 15 years in 1994 dollars, with a present value of $75.19 million (7 percent discount rate). The total potential costs for 10-to-19- and 20-to-30-seat airplanes are presented in the following areas:

	10–19 seats	20–30 seats	Total cost	Present value
Operations	$48.32	$24.87	$73.19	$46.18
Maintenance	12.93	5.26	18.19	11.93
Cabin Safety	5.99	5.58	11.57	8.20
Part 119	2.73	0.63	3.36	2.30
Certification	10.39	1.10	11.49	6.58
Total	$80.36	$37.44	$117.80	$75.19

Based on the $80.36 million figure shown above, the FAA estimates that, on average over the next 15 years, the price of a one-way airline ticket will increase by $0.62 for affected operators with 10-to-19-seat airplanes. Similarly, based on the $37.44 million figure, the ticket price will increase by $0.30 for affected operators with 20-to-30-seat airplanes.

It is important to note that the total cost per airplane in each of the first four years of the rule sheds light on the initial compliance costs. These costs per airplane are as follows:

	10-to-19-seat airplanes	20-to-30-seat airplanes
1996	$19,400	$21,900
1997	7,600	6,600
1998	7,000	6,300
1999	7,200	5,900

1. Operations

This section of the regulatory evaluation examines the costs of the changes with regard to operations. Fifteen-year costs for operations requirements will total $73.19 million ($46.18 million, present value). The cost items, by section, are provided below.

Section 121.97: Airports Required Data. Each domestic and flag air carrier must show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. Consideration is given items as size, surface, obstructions, etc. In short, this requirement will ensure that in the event of a single-engine failure each operator's airplane type (regardless of the number of airplanes) can either stop at the end of the runway or, if it continues to fly, can safely clear all of the obstacles in the flight path.

To estimate the potential cost of this requirement, the FAA contacted several commuter operators. According to these operators, the potential cost of compliance is based on performance-obstacle-data analyses for airplane types at particular airports. To ensure that the performance objective will be met, operators are required to make certain that the maximum-allowable-takeoff weight is always achieved under certain temperature conditions. This is done by conducting performance analyses for each airplane type at the airport it intends to operate. To achieve this objective, operators typically hire a contractor to perform obstacle-location and height surveys. The contractor uses the airplane's flight-manual-performance data to assess flap settings and runway-end capability for a particular airport for information related to takeoff-run-acceleration distance, runway length, anti-skid, etc.

The typical contractor fee is $20 per runway. For example, ABC airlines is a commuter operator with 5 types of airplanes that it wishes to operate at airports in 10 cities. Each city has an airport with 10 runways. The operator, however, only intends to use two runways per airport in each of the 10 cities. The cost performing the needed obstacle performance data analyses is $2,000 ($20 per runway ×10 airports ×2 runways per airport ×5 airplane types). While this is a simple example of estimating a fictitious operator's potential cost of compliance, it sheds light on the difficulty of deriving such

costs reliably. Although reliable information is available on the cost of contractor conducted obstacle-performance-data analyses, the same reliability does not apply to the number of runways or airports commuter operators will use. Potential costs for this requirement cannot be estimated reliably without knowing what airports, runways, and the types of airplanes operators will use. It is for this reason that this section of the evaluation contains no estimate for costs. Despite this situation, the FAA contends that this requirement is an important element in achieving the one-level-of-safety objective.

Section 121.99: Communications Facilities. Currently, this section requires each domestic and flag air carrier to show availability of a two-way air/ground radio communication system at points that will ensure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point-to-point circuits). Each carrier also must show that the system is accessible between each airplane and appropriate dispatch office, and between each airplane and the appropriate ATC unit. In addition, each system must be independent of any other system operated by the United States.

To estimate the potential cost, the FAA contacted several industry sources, including operators and data link service venders. These sources indicated that the least expensive option for most operators would be a voice data link service from an FAA-approved vender. According to Aeronautical Radio, Inc. (ARINC) and several operators with operations specifications for parts 121 and 135 (scheduled), the needed voice-data-link service consists of a monthly access fee of $35 per operator and a fee of $14 per contact. Contact refers to any form of voice communication between the pilot while in flight and the home dispatcher.

If, from a worst case standpoint, none of the current commuters have this access service, the total cost will be the number of affected operators times the monthly access fee of $35 over the next 15 years. This evaluation estimates that the number of commuter operators will range from 63 in 1996 to 73 in 2010. This will result in a total cost of $445 million ($269 million, present value). The contact fee cost can be estimated in a similar manner, though it employs a great deal more of uncertainty because the actual number of contacts each operator will make annually is unknown and usually varies among operators. According to industry sources, there will be a certain percentage of contacts per annual departures for each airplane in an operator's fleet. Based on information contained in the Regional Airlines Association's Annual Report for 1994, each airplane in the U.S. commuter fleet makes an average of 5.68 departures per day or 2,074 annually. The number of airplanes with 10 to 30 seats in the U.S. commuter fleet is projected to range from 950 in 1996 to 1,099 in 2010.

Initially for this evaluation, the FAA assumed at least one contact per departure. Multiplying the 2,074 annual departures times the $14 contact fee gives the total potential contact cost of $445 million ($269 million, present) over the next 15 years. In realistic terms, however, this cost estimate is too high because it does not reflect the actual practice in industry. According to several operators, contacts via ARINC or a similar service would only be made during emergency situations (for example, flight delays, inclement weather, etc.). Within an average radius of 50 nautical miles, contacts can be made directly between the airplane pilot and the home dispatcher, without the aid of an external-communications-voice-data network (e.g., ARINC or a similar service). In flat lands, this communication can be made up to 100 miles, when the dispatcher is located at the hub. In high terrain areas, communication with the home dispatcher would have a radius of less than 50 miles. In emergency situations that arise beyond the average radius of 50 miles, ARINC or similar service would be needed. This would be especially true in remote areas such as the U.S. northern frontier (Montana, Idaho, etc.), Alaska, American Samoa, and Hawaii. This information indicates that frequency of use of ARINC or a similar service may not be as high as originally expected. According to some operators, the likelihood of having at least one contact via ARINC per airplane departure by an operator, on average, could range from 5 to 10 percent. When considering that contacts via ARINC or a similar service beyond the 50-mile radius would only be made in emergency situations, operators, on average, would make contact on 10 percent of their airplane departures. Employing this approach, costs will amount to $44 million ($26 million, present value) over the next 15 years.

In addition to the information above, industry sources contacted indicated that commuter operators with dual or split operations specifications (both parts 121 and 135) already have this capability. These operators (approximately 19) account for over 60 percent of all the airplanes in the U.S. commuter fleet. This scenario will result in estimated costs of $18.9 million ($11.5 million, present value) over the next 15 years. This cost estimate also recognizes that the number of contacts will be lower because pilots typically contact ATC for information related primarily to weather and air traffic delays. Therefore, this evaluation assumes only 10 percent of the commuter airplane departures, by operators without dual operations specifications, will engage in contacts via ARINC or similar service.

Section 121.135—Contents of Manual. This section will require an extensive list of manual contents for operators. Unlike part 135, part 121 requires more detailed instructions to flight and ground personnel, including dispatch procedures, airport information, and approach procedures. The manuals of part 121 operators are, on average, three times as voluminous as those of part 135 operators. Thus, compliance with the final rule will result in major rewrites of manuals. Based on cost information received from industry, affected operators will spend an additional $50,000 on average ($30,000 to $70,000) each for new manuals. This cost estimate multiplied times the number of operators over the next 15 years will total approximately $3.65 million, ($3.28 million, present value). This cost estimate for manuals takes into account additional preparation and distribution requirements.

Section 121.337—Protective Breathing Equipment (PBE) for the Cockpit. This section will require PBE units for persons operating airplanes under part 121. Part 135 has no PBE requirement. While commuter airplanes are typically smaller than airplanes operating under part 121, the accessibility of PBE in the cockpit will provide smoke-and-fumes protection for pilots. The airplane operator is allowed to use fixed equipment such as oxygen masks and smoke goggles at each pilot station. Depending on the present airplane configuration, this may require substantial modifications.

According to FAA's technical personnel, airplanes with 20-to-30 seats already have fixed PBE units for pilot stations in the cockpit for smoke and fume protection but they are not equipped with a portable PBE unit for fire fighting. In terms of operators with 10-to-19-seat airplanes, the FAA is uncertain as to how many part 135 operators are already equipped with PBE (portable or fixed) in the cockpit. As the result of this uncertainty, this evaluation assumes that part 135 operators with 10-to-19-seat airplanes are not currently equipped with PBE in

the cockpit. This evaluation also assumes that operators with 20-to-30-seat airplanes do not have portable PBE in the cockpit for firefighting. The installation of fixed PBE in some commuter airplanes could be prohibitively expensive because of complex breathing gas supply requirements. Since portable PBE is much cheaper than fixed PBE, operators with 10-to-19-seat commuter airplanes are assumed to acquire and install portable smoke and fume PBE in the cockpit if not equipped with an oxygen system. Each portable PBE is estimated to cost $400 per unit. In 1996 and subsequent years, operators with 10-to-19-seat airplanes are assumed to install two smoke-and-fumes portable PBE units in the cockpit: one at each of the two pilot stations. Over this same period, operators with 20-to-30-seat airplanes are assumed to install one additional fire-fighting-portable PBE unit in the cockpit. In addition to PBE units, costs are also estimated for the weight penalty of each PBE unit. Each of the cost components multiplied by the number of airplanes in existence, over the next 15 years, will result in an estimated cost of $2.64 million, ($1.81 million, present value).

Section 121.357—Airborne Weather Radar. This section will require part 135 commuters to equip their airplanes with approved weather radar. Currently, section 135.173 requires that operators equip their airplanes with either thunderstorm detection equipment or approved weather radar. However, section 135.175 requires operators of airplanes with 20 to 30 passenger seats to equip their airplanes with weather radar. An estimated 90 percent of all commuter airplanes with 10-to-19 passenger seats already have approved weather radar equipment. Based on this information, the rule will only affect an estimated 10 percent of those operators of airplanes with 10-to-19 seats (excluding commuter operators in Alaska and Hawaii which are not covered by the rule). Because of their unique flying environments, commuter operators in Hawaii and Alaska are not required under current regulations to be equipped with weather radar equipment. Weather radar costs approximately $30,000 per airplane, including installation. Each weather radar unit weighs 25 pounds. This weight translates into an average weight penalty of 87 gallons of fuel per airplane per year. The sum of these cost components multiplied by the number of commuter airplanes over the next 15 years will total $5.08 million ($3.73 million, present value).

Sections 121.593–595: Dispatching authority for domestic and flag air carriers; 121.107: Dispatch centers; 121.533–535: Responsibility for operational control; 121.683: Crewmember and dispatcher record; 121.687: Dispatch release; and other sections that assign specific duties to dispatchers. The rule will require that flights in scheduled commuter operations with 10-to-30 seat airplanes be authorized by a dispatcher. Dispatchers currently are not required under part 135. The FAA assumes that the majority of operators currently certificated only under part 135 do not employ fully qualified dispatchers. These operators primarily employ full-time flight locators. The FAA further assumes that operators conducting both parts 121 and 135 operations currently employ half as many qualified dispatchers as they will need to dispatch all of their flights.

The number of dispatchers was primarily calculated using information provided by Airline Dispatchers Federation (ADF) and industry sources. The ADF estimated that an air carrier with 30 airplanes will need eight or nine dispatchers to staff a 24-hour operation. The FAA used a ratio of eight dispatchers to 30 airplanes of 10 or more passenger seats for each part 135 commuter air carrier. The total number of required dispatchers was computed by multiplying the number of airplanes with 10 or more passenger seats operated by each air carrier by the ratio 8 to 30. However, to take into account that an 8-hour day might not cover all of an air carrier's daily flights, as well as vacation and sick leave, the FAA assumes that each air carrier will need at least two dispatchers. In 1996, 307 dispatchers will be needed to meet the requirements of this rule. In 1997, the number of dispatchers will be 318 and will grow to 353 by 2010.

Unlike in regulatory evaluation for the proposed rule, the cost of compliance for the final rule is based primarily on the median annual salary differential between flight locators and dispatchers. The FAA estimated the median annual salary of a part 135 dispatcher on the hourly wage of $9.10 reported by the ADF. The FAA computed an annual median salary of $23,849 for a dispatcher by multiplying the ADF's hourly wage rate estimate of $9.10 times a fringe benefits factor of 1.26 (or 26 percent) and full-time yearly hours of 2,080 (52 wks. × 40 hrs.). Similarly, the median annual salary of a flight locator was estimated to be $19,656 ($7.50×1.26×2,080). The annual median salary differential was estimated to be $4,193 ($23,849 less $19,656).

Based primarily on information received from FAA technical personnel and industry (operators and ADF's comments on the NPRM), about 67 percent of the required flight dispatchers will come from existing part 135 flight locators and approximately 33 percent of the required dispatchers will be hired from outside by operators. Some of these new hires will be supervisors/trainers. According to several commuter operators contacted recently, they will have to hire dispatchers from outside of their company in order for them to meet the proposed dispatcher requirements. The decision to hire dispatchers from the outside is based primarily on: (1) The need for additional supervisory personnel because of the projected number of inexperienced dispatchers to be hired under part 121 and (2) all of their existing personnel (flight locators and to some flight followers) cannot be trained at once without seriously disrupting daily operations. Thus, of all the new dispatchers projected to be hired over the next 15 years, about 67 percent will be from existing personnel (upgraded from flight locators and some flight followers) with the affected commuter operators and 33 percent from the outside (or non-upgraded employees).

Training costs include 40 hours of initial training, 10 hours of recurrent training, and 5 hours of operating familiarization for dispatchers who authorize turbopropeller flights (as required by sections 121.422(c)(1)(ii), 121.427(c)(4)(ii), and 121.463(a)(2)). Air carriers are assumed to incur the cost of dispatchers' salaries during training. In addition to salary costs, the FAA assumes that the air carrier will incur $1,000 in costs for initial training for each dispatcher and $500 in costs for recurrent training for each dispatcher. The FAA estimates that each carrier will incur $1,000 in administrative costs for each dispatcher hired. The FAA recognizes that during the initial and follow-up training for new dispatchers, operators may incur additional costs in the form of reduced operational efficiency, though to what extent is unknown. However, in view of all available information, the FAA has no indication that such costs would be significant.

Total personnel-related costs were calculated by adding the salary, training, administrative costs, and multiplying by the number of new dispatchers required. The FAA estimates that the dispatcher requirement will cost $42.86 million ($25.9 million, present value) over the next 15 years. Approximately $25.66

million ($15.49 million, present value) will be borne by operators of 10-to-19-seat airplanes, and the remaining $17.20 million ($10.38 million, present value) will be borne by operators of 20-to-30-seat airplanes.

According to the ADF, most part 135 operators already have facilities and communications equipment that satisfy the dispatch requirements under part 121. Accordingly, the FAA has not included estimates of additional costs attributable to facilities and equipment. The FAA acknowledges that this is a reasonable assessment since all commuter operators exercise some degree of operational control with the use of either flight locating or flight following. The provision of either one of these services requires communication facilities and associated equipment.

Section 121.383: Age-60 Requirement. This section will prohibit operators of airplanes in scheduled service with 10-to-30 passenger seats from using people over the age of 60 as pilots for that service. Currently there is no age restriction for pilots in part 135 operations. Based on data provided by the Air Line Pilots Association (ALPA), the FAA estimates that only about 0.55 percent of part 135 commuter pilots are currently over the age of 60. The FAA estimates that about 45 pilots will be affected if the requirement takes effect in the year 1999. The FAA also estimates, based on ALPA data, that 0.32 percent of current part 135 pilots would reach age 60 in subsequent years and thus about 27 pilots would need to be replaced each year from 1999 on.

The FAA is unable to quantify the costs to operators or to affected pilots. The nature and magnitude of these costs depend upon the alternatives available to each party, which the FAA has been unable to identify in sufficient detail to estimate costs. The FAA believes that the four-year phase-in of this requirement will help to minimize any potential disruptions the rule may cause and that the resulting cost are not likely to be substantial. The FAA also believes that the age 60 requirement is essential to achieve the ''one level of safety'' goal established by the Secretary of Transportation and that any cost of this requirement is justified by its benefits.

2. Cabin Safety

This section of the regulatory evaluation examines the costs of the changes with regard to cabin safety. Over the next 15 years, costs for cabin safety items will total $11.57 million ($8.20 million, present value). The cost items, by section, are provided below.

Sections 121.133, 121.135, and 121.137—Flight Attendant Manual. These sections will require all flight attendants to have an operations manual. There is no such requirement for flight attendants currently working for part 135 operators. This requirement necessitates preparing such manuals for each flight attendant . Since each flight attendant is required to have a manual, the number of manuals equals the number of flight attendants. The 15-year cost for the preparation, copying, and binding of these manuals is $61,600 ($47,200, present value). The costs involve the preparation of the manual contents and the copying and binding of the finished manual. FAA analysis projects 277 20-to-30-seat airplanes in 20 air carriers in 1996, increasing to 556 such airplanes in 39 air carriers by 2010. Each air carrier will employ a flight attendant supervisor (paid at $24.19 per hour) and a clerical worker (paid at $11.00 per hour) to spend 40 hours each preparing a manual; hence, it will cost each air carrier about $1,400 to prepare a manual. The manual is an average of 100 pages long; at $.10 to copy each page, and $2 to bind each manual, total copying and binding costs is expected to total $12 for each manual. Existing air carriers with new airplanes in the future will have to reproduce a new manual for each airplane. All new air carriers with 20-to-30-seat airplanes, which will total 19 by 2010, will also have to prepare and publish flight attendant manuals.

Section 121.285 and 121.589—Carry-On Baggage. These sections will require affected operators to stow carry-on baggage and develop a program to screen carry-on baggage. Screening, in this context, refers to a visual check to ensure that the carry-on baggage is the proper size and could be stored properly on the airplane; it does not refer to security screening. Currently, part 135 airplanes adhere to substantive baggage stowage procedures, but part 121.589 requires that a crewmember verify that all baggage is properly secured before all doors are closed and the airplane leaves the gate. Some air carriers argue that this requirement will increase time at the gate, reduce airplane utilization time, and thus result in lower revenue to air carriers. The FAA contends that there will be no costs for this procedure due to the minimal time necessary to properly secure carry-on baggage and the fact that airplanes experience routine delays anyway while waiting for clearance on the runway. The cost of the rule will involve the preparation of an addendum to the Operations Specifications in which each carrier will outline its procedures for a baggage program.

The 15-year cost for operators of 10-to-30-seat airplanes to prepare a carry-on baggage addendum to the Operations Specifications will be $20,600 ($18,500, present value). This cost is divided between 10-to-19-seat airplanes ($12,300) and 20-to-30-seat airplanes ($8,300). For each air carrier, this process involves two people—a flight attendant supervisor for 20-to-30-seat airplanes or a crewmember supervisor for 10-to-19-seat airplanes (both paid at $24.19 per hour) and a clerical person ($11.00 per hour) to do the paperwork (average of 8 hours each) and to develop the addendum. Each carrier will bear the cost of developing the addendum for the airplanes in its fleet; it costs each air carrier about $280 for this work. The number of air carriers is projected to rise from 63 in 1996 to 73 in 2010. Finally, the actual baggage screening function will not impose costs because part 135 crewmembers are already required to screen baggage in order to secure it.

Section 121.291(d)—Ditching Demonstration. This section requires new air carriers to conduct a ditching demonstration for each airplane type it proposes to operate in extended overwater operations. There is no similar requirement in part 135.

In the NPRM, the FAA used an estimate that 25 percent of all 10-to-30-seat airplanes conduct extended overwater flights. Upon further examination, this assumption turned out to be too high. Based on a recent survey, the FAA has ascertained that less than 3 percent of all 10-to-19 seat airplanes (14 airplanes) and no 20-to-30-seat airplanes currently conduct overwater flights. The percentages were projected into the future. Based on this paucity of airplanes certificated for extended overwater flights, the FAA tried to estimate the costs for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes using two different methods. In both cases, as will be shown below, the 15-year cost for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes will be zero.

The first method involves taking an aggregate approach and examining the entire fleet using the same methodology used in the NPRM. This involves a demonstration which requires crewmembers to perform ditching evacuation drills and safety procedures including the deployment of one raft. For both 10-to-19- and 20-to-30-seat airplanes the annual incremental change in the number of airplanes times the applicable percentage of airplanes conducting extended overwater flights was zero for every year between 1996 and 2010. Accordingly, using this methodology, the cost will be zero.

The second method involved individually examining those air carriers that this provision affects. The FAA was able to identify those operators that conduct extended overwater operations with 10-to-30-seat airplanes. In every case, the airplanes involved were 10-to-19-seat types. Since the FAA is projecting only a modest increase in such airplanes through 1997 and an overall decline in 10-to-19-seat airplanes after 1997, it is highly unlikely that these operators will seek to increase their fleet size with a new airplane make and model currently not in its fleet that will require a ditching evacuation demonstration. Therefore, there will be no cost.

Both the operator and the FAA incur labor costs to complete a ditching demonstration. The actual demonstration takes about one hour to complete and requires two sets of crews. If an operator should need to conduct a ditching demonstration, the FAA estimates the cost for a 10-to-19 seat airplane at $1,025 per demonstration.

Section 121.309—Medical Kits. This section will require affected commuters to have one medical kit on each 20-to-30-seat airplane for those operators. The FAA has decided to except 10-to-19-seat airplanes from this requirement due to their smaller size and the unlikelihood that a medical professional will be on board or a flight attendant to administer the use of the kit.

The FAA estimates that the 15-year cost for providing medical kits on the 20-to-30-seat airplanes operating under part 135 will be $1.11 million ($674,300, present value). The costs of providing medical kits are composed of acquisition ($200 each) with a 60 percent spares reserve, installation, annual replacement (5 percent), annual maintenance ($20 per kit), a weight penalty (7 pounds per unit), physician consultation expenses ($500 per consultation), engineering and administrative costs, and record keeping (1 hour each time a kit is used at $20.58 per hour).

Acquisition, replacement, and maintenance costs for kits are a function of the number of airplanes. In the first year of the rule, the bulk of the medical kits will be purchased; 443 kits will be needed for 277 airplanes, which takes into account the 60 percent spares reserve. Additional kits are purchased in the future as the airplane fleet increases to 556 airplanes in 2010, and to take into account a 5 percent annual replacement rate. Maintenance costs are calculated based on the number of units that were in use the previous year. The annual maintenance cost equals $8,860 ($20 per kit×443 kits) for all kits (active and spares) in 1997.

Historical data on part 121 airplanes shows one medical emergency for every 124,647 passenger enplanements. The FAA assumes that the medical emergency rate is the same on 20-to-30-seat airplanes since all air carriers serve the same base population. The FAA estimates 70 medical emergencies in 1996 and 77 medical emergencies in 1997. A physician consultation will be required twice a year per air carrier to obtain certain contents, such as prescription drugs, for the medical kits at a cost of $500 per consultation. In 1996, for the 20 projected air carriers, total consultations will total $20,000. Record keeping will be needed per medical emergency; it will take one hour to write up each emergency. At $20.58 per hour, in 1996, record keeping costs will total $1,433.

In the NPRM, the FAA assumed that the medical kits could be secured and installed with industrial strength Velcro tape. The FAA still believes that securing these kits with Velcro (a low cost option, at $20 per kit plus two hours for a Maintenance worker at $20.58 per hour) will meet the 18–G requirement. Also, airplane manufacturers will need to spend $1,500 for each make and model to account for the design and administrative costs involved with securing these kits and to comply with FAA regulations; with 8 makes and models, this totals $12,000. This cost will be spread across the entire population of each make and model.

Section 121.309—First Aid Kit. This section will require 10-to-19-seat airplanes to have at least one first aid kit. Currently, part 135 requires all airplanes with greater than 19 seats to have one kit, but there is no requirement for airplanes with 10 to 19 seats to have a kit.

The 15-year cost of this requirement will be $371,400 ($267,400, present value). The costs of providing first aid kits are composed of acquisition ($70 each based on industry survey) with a 35 percent spares reserve, installation, annual replacement rate (5 percent of total), a weight penalty (4 pounds), engineering and administrative costs, and annual maintenance ($7 per kit). Costs are a function of the 10-to-19-seat airplane count, which ranges from 673 in 1996 to 543 in 2010.

Section 121.309—Halon Fire Extinguisher. This section will require commuter operators of 10-to-30-seat airplanes to replace existing or install fire extinguishers (2 per 10-to-30-seat airplane (one in cabin and one in cockpit) with halon fire extinguishers. For this analysis, the FAA assumes that no part 135 airplanes are currently equipped with halon fire extinguishers. Since part 135 airplanes are already equipped with fire extinguishers prior to complying with part 121 standards, there will be no additional maintenance costs or weight penalties for this equipment.

The 15-year cost of this requirement is $442,900 ($346,500, present value). The cost of this provision will involve purchasing the requisite number of halon fire extinguishers per airplane in 1996, a 13 percent spares reserve ratio, and a 5 percent recharge rate per year after 1996, and up-front administrative costs.

Section 121.549—Flashlight. This section will require commuter operators of 20-to-30-seat airplanes to acquire two additional portable flashlights for use by the flight attendant and the copilot. This section will also require 10-to-19-seat airplanes to acquire one additional portable flashlight for use by the copilot. The analysis assumes that no part 135 airplanes with 10-to-30 seats are equipped with portable flashlights. Based on a recent survey, a portable flashlight costs $5 and 2 D alkaline battery cells cost $2.25.

The 15-year cost of this requirement will be $134,400 ($82,000, present value) broken out between $56,500 for 10-to-19-seat airplanes and $77,900 for 20-to-30-seat airplanes. The cost of this provision will involve purchasing the requisite number of flashlights for airplanes in 1996 and for airplanes added to the fleet through 2010, 10 percent spares, 5 percent replacement rate for every year after 1996, and a weight penalty (1 pound per flashlight). The analysis also assumes that all batteries will be replaced each year.

Section 121.313—Cockpit Key. This section will require all required crewmembers of affected operators to have access to a key for the locking cockpit door. This lock and key requirement will provide additional security for equipment and instruments in the cockpit. This requirement only applies to 20-to-30-seat airplanes. Airplanes with 10 to 19 seats are not required to have locking cockpit doors and will not be affected by this requirement. The rule will require 20-to-30-seat airplanes to retrofit the cockpit door with a lock and copy a key ($1 per key). If an airplane does not have a lock, then the operators will be required to install one.

The 15-year cost is $102,900 ($78,500, present value). The highest yearly cost ($51,245) will occur in 1996 when all of the 277 20-to-30-seat airplanes will have their cockpit doors retrofitted with locks

and keys. Subsequent yearly costs are based on the annual increase in airplanes. Hence, in 1997, with 30 new airplanes, costs total $5,550 ($90 for new keys + $5,460 for door retrofit costs).

Section 121.333—Portable Oxygen. This section will require airplanes that are certificated to fly above 25,000 feet to have a portable oxygen unit for each flight attendant. This requirement will only apply to commuter airplanes having more than 19 seats. This is because currently no 10-to-19-seat airplanes in commuter operations are certificated to fly above 25,000 feet.; also, 10-to-19-seat airplanes are not required to have flight attendants on board. Of the 249 20-to-30 seat airplanes in 1995, 146 fly over 25,000 feet.

The 15-year cost to equip all affected 20-to-30-seat part 135 airplanes will be $472,900 ($299,200, present value). Costs primarily are composed of $400 per oxygen unit and weight penalty.

Parts 121.333, 121.571, 121.573—Passenger Information. New cards will have to be prepared for 20-to-30-seat airplanes. Industry experience has shown that each card has a lifetime of approximately 3 years. Thus, every year, only one-third of the cards will normally be replaced.

The 15-year cost for the preparation of these cards will be $125,000 ($72,300, present value). Each air carrier having 20-to-30 seat airplanes (20 in 1996 growing to 39 in 2010) will incur preparation costs and will then need to prepare enough passenger information cards for all airplanes in its fleet. Preparation costs involve two people two hours each: a flight attendant supervisor ($24.19 per hour) and a paperwork layout specialist ($20.58 per hour). There will be no training costs, as the flight attendant could read the new passenger information material directly from the manual. Based on an industry survey, the FAA assumes that it costs $1 to print and distribute each information card; a total of 5,353 cards will need to be produced in 1996.

Section 121.337—Protective Breathing Equipment (PBE) for the Cabin. This section requires a fire fighting PBE unit in the cabin on all 20-to-30-seat airplanes. The 15-year costs to supply all 20-to-30-seat airplanes total $936,800 ($595,600, present value). Costs are composed of PBE acquisition ($400 per unit) with a 40 percent spares reserve ratio, installation (two hours of mechanic labor), engineering and administration costs, a 5 percent replacement rate per year, annual maintenance ($40 per unit performed annually), and a weight penalty (5 pounds per unit, one unit per airplane).

Section 121.339—Life Rafts. This section requires all affected commuters conducting extended overwater operations to carry an additional life raft. The 15-year cost to equip the affected airplanes with an additional life raft will be $265,100 ($183,800, present value).

Section 121.340—Flotation Cushions and Life Vests. This section requires operators to provide a flotation cushion or life vest for each passenger seat on each airplane. In 1995, 10-to-19-seat airplanes average 18.66 seats per airplane and 20-to-30-seat airplanes average 28.99 seats per airplane. In this analysis, the FAA assumes that these ratios remain constant into the future.

The 15-year cost for providing flotation cushions or life vests on 10-to-30-seat airplanes will be $7.50 million ($5.53 million, present value) composed of $5.03 million for 10-to-19-seat airplanes and $2.47 million for 20-to-30-seat airplanes. The FAA assumes that 10-to-19-seat airplanes will not be able to install flotation cushions and hence will obtain life vests. In addition, even though some airplanes may have flotation cushions currently installed, the analysis assumes that all operators of 20-to-30-seat airplanes will replace existing seat cushions with flotation cushions. Data from industry sources place the same cost and weight on both items: $50 and 2 pounds each. As the current seat cushions weigh the same amount, there will not be a weight penalty on the 20-to-30-seat airplanes. The total number of life vests and cushions per year is derived by multiplying the number of seats per airplane times the projected airplane count for the 10-to-19-seat and 20-to-30-seat airplane categories.

Section 121.391—Flight Attendants At The Gate. This section requires a flight attendant or other authorized person to stay on the airplane during intermediate stops while passengers are on board. The final rule adopts new section 121.393(a) for 10-to-19 seat airplanes to allow crewmembers (not necessarily a flight attendant) to stay near the airplane.

The only costs imposed on operators, as a result of this rule will be the training and documentation of authorized substitute personnel. Based on information received from FAA technical personnel, there will be no additional crewmember personnel costs for flight attendants or other crewmembers at the gate requirement due to the delay. In the NPRM, the FAA attributed additional compensation costs to operators in the event of a flight delay due to additional time spent by personnel to monitor passengers. FAA technical personnel state that delay costs are a result of the air carrier operations system and not the final rule. The air carrier operations system currently compensates any additional personnel costs due to delays.

Individual operators can comply by having a flight crewmember near the airplane (no cost) or by following one of three scenarios. Under the first scenario, operators could require all passengers to deplane during intermediate stops at the gate. Because deplaning will cause inconvenience to the passengers, air carriers will not use this option all the time. The FAA acknowledges that the deplanement of passengers under this scenario may impose some cost on passengers in the form of inconvenience; however, the FAA is unable to quantify this cost. Under the second scenario, operators can require either a flight attendant or pilot to remain on the airplane at intermediate stops as long as passengers are on board. Generally, the 20-to-30 seat airplanes will use a flight attendant, while 10-to-19 seat airplanes will use a pilot. Under the third scenario, operators can allow a trained, authorized person to stand in for the flight attendant or pilot when coverage is needed due to flight delay. Not all air carriers have authorized personnel at all intermediate stops; this will put a cap on the amount of time that this option will be used. This third scenario will require 24 hours of training for each authorized person ($16.48 per hour) and documentation of personnel records by a clerical worker (paid at $11.00 per hour for one hour of work per record). In the NPRM, the FAA assumed that non-Alaska operators would use the third scenario 20 percent of the time, and the FAA is keeping this percentage. Based on industry sources, the FAA does not believe it is very likely that air carriers in Alaska will have trained substitute personnel waiting at the intermediate stops to be used in the event that the airplane is delayed; thus, the third scenario will not be used. Currently, 88.4 percent of all 20-to-30 seat airplanes and 91.9 percent of all 10-to-19 airplanes fly in areas other than Alaska, and this analysis projects these percentages into the future.

The 15-year cost for training and documentation of authorized personnel in areas other than Alaska on 10-to-30-seat airplanes will be $20,500 (present value, $12,700). This cost is the summation of the 10-to-19-seat airplane cost and the 20-to-30-seat airplane category cost. The cost for the 10-to-19-seat category is derived by multiplying the total 15-year cost for training and documentation ($67,500) by the

expected probability of occurrence for the third scenario (20%) and then multiplying by the percentage of the fleet not operating in Alaska (91.9%). The cost for the 20-to-30-seat category is derived by multiplying the total 15-year cost for training and documentation ($45,500) by the expected probability of occurrence for the third scenario (20%) and then multiplying by the percentage of the fleet not operating in Alaska (88.4%).

3. Certification

This section examines the costs of the rule with regards to airplane certification and performance. The total 15-year costs for certification are $11.49 million with a present value of $6.58 million.

Part 121 Subpart I: Performance Criteria. In the NPRM, the FAA had stated its belief that all of the commuter airplanes would be able to meet the part 121 performance standards. Consequently, the only compliance cost would be a manufacturer's one-time recertification cost of $5,000 per airplane. However, after additional FAA analysis and input from several commenters, the FAA realizes that some of these airplanes are not able to meet the part 121 performance standards. Further, there will be an enormous economic impact if the proposed rule were to be adopted for all commuter airplanes.

Airplanes operating under part 121 face stricter performance requirements than those faced by airplanes operating under part 135. Part 135 performance requirements allow greater gross take-off weights for a given runway length and, conversely, allow a shorter runway for a given gross take-off weight than are allowed under part 121 for high altitude and/or high temperature conditions. However, as airplane models' performance capabilities differ, a change in performance requirements has a different effect across airplane models.

For example, the SFAR 41 and predecessor category commuter airplane performance capabilities are such that compliance with the part 121 performance requirements would require them to offload so many passengers or cargo as to become unprofitable to operate in scheduled passenger service. Due to the potential substantial economic loss and the potential safety reduction that would result when many of these airplane operators substitute airplanes with fewer than 10 passenger seats for these airplanes, the FAA decides that they will have 15 years to meet the part 121 performance requirements. By allowing these airplanes to remain in scheduled passenger service, their operators will have a sufficient amount of time to profitably exploit these airplanes, to plan their replacement, and to reduce the potential impact on the resale price in other uses of these airplanes. In addition, this 15-year period will provide an opportunity for manufacturers to develop future airplanes that may be better substitutes than the current available substitute airplane models. Further, this 15-year allowance will reduce the tendency for many of these operators to substitute smaller airplanes with less than 10 seats. These airplanes have an accident rate 14 times that of 10-to-15-seat commuter airplanes. Nevertheless, some of these airplanes will be phased out of scheduled passenger service before they would have been phased out if there were no commuter rule.

Currently, there are 112 pre-SFAR 41 commuter airplanes in part 135 scheduled service. As the FAA was unable to directly obtain the ages of these airplanes, the FAA used a data source to construct an approximate age-profile distribution for each of these airplane models and then assigned the appropriate number of airplanes to individual years based on those distributions. The FAA determines that, due to the increasing maintenance costs as airplanes age, the economic lifespan of these airplanes in scheduled passenger service is 30 years for the Twin Otter and 25 years for all of the other models. On that basis, the FAA projects that, in the absence of the commuter rule, 4 of these airplanes would still be in scheduled passenger service after 15 years.

Finally, these airplanes' market values will fall over time because the airplane ages because it takes an increasing level of expenditure on maintenance and replacement to keep the airplane airworthy for scheduled passenger service. Currently, the average market values for the pre-SFAR 41C airplanes are $500,000 for the Twin Otter and the EMB–110; $350,000 for the Beech 99; and $250,000 for the SA–226 and the Beech 200.

In light of those factors as they relate to the pre-SFAR 41 airplanes, the FAA determines that a one-year compliance date would generate a 60 percent loss in these airplanes' average market values and this percentage loss is reduced by 2.5 percentage points per year for four years (e.g., the second year would have a percentage loss of 57.5 percent, the third year will be 55 percent, etc.) and by 5 percentage points per year thereafter. Thus, the percentage loss of the market value of these airplanes in 15 years will be 5 percent of that airplane's market value. On that basis, the FAA determines that in 15 years these airplanes will incur a reduction in market value of $56,000 ($20,000, present value).

SFAR 41 airplane models would also be affected by the part 121 performance criteria because these criteria are stricter than those in part 135. However, the part 121 performance requirements are very similar to the performance requirements in the ICAO Annex 8 flight operating requirements—the flight operating requirements under which these airplanes must fly in European scheduled service. As all of these airplanes are used in European scheduled service, they can comply with the part 121 performance requirements, but at a potential payload loss. There are some combinations of temperature, airport elevation (pressure altitude) and airport runway length that would require SFAR 41C airplanes either: (1) To unload one, two, or even three passengers from the currently permitted part 135 gross take-off weight; or (2) to operate out of airports with longer runway lengths in order to meet the ICAO Annex 8 performance requirements. For example, the minimum runway length for a Beech 1900–C airplane with a 16,600 lb. maximum takeoff weight (its maximum certificated load) from a pressure altitude of 1,000 ft. (a typical Midwestern airport) at 13 degrees Centigrade (standard day) would be 4,700 ft. under part 135 but would be 5,900 ft. under ICAO Annex 8. From another perspective, in order for a Beech 1900–C to operate under ICAO Annex 8 from an airport with a 4,700 ft. runway, the maximum allowable takeoff weight would be 14,900 lbs. in comparison to the 16,600 lbs. allowable under part 135. One commenter reports that these operating limitations may affect these SFAR 41 airplanes at as many as 65 airports at some point during the year. Nevertheless, for most of the temperatures, airport elevations (pressure altitude), runway lengths, and actual takeoff loads faced by these airplanes, the part 121 performance requirements, ICAO Annex 8 rules, and the part 135 performance requirements would have the same limiting effect on these airplanes' operations.

As a result, the FAA will allow SFAR 41 and predecessor category airplanes 15 years to comply with the part 121 performance requirements. With a 15-year time horizon, operators will be able to organize their schedules (for example, departing high temperature airports earlier in the morning), their airplane/airport pairings, etc. such that the costs in 15 years will be minimal.

Finally, the commuter category airplanes have the performance capability of meeting part 121 performance requirements. However, the manufacturers will need to document these capabilities for the approved flight manuals. This documentation will require about 20 hours of flight time at a per hour cost of $1,500 (includes instrument calibration, engineering analysis, ground personnel review, etc.) for a total cost of $30,000 per type certificate. In addition, there will be a one-time manufacturer's cost of $5,000 per type certificate to obtain FAA approval for this flight manual revision. Thus, the one-time first-year cost for commuter category airplanes will be $105,000.

Section 121.161(a)—Airplane Limitations: Type of Route. Section 121.161(a) requires that an adequate airport be within one hour flying time at single engine cruising speed along all points of the designated flight route. There is no similar requirement in part 135. This requirement is not expected to affect scheduled operators in the lower 48 states. In the Regulatory Evaluation for the NPRM, the FAA had estimated that 150 round-trip flights in Alaska would be affected annually, with reroutings adding one-half hour to each round-trip, for a total of 75 hours increased flying time. Applying an hourly variable operating cost for Alaskan air carrier commuter category airplanes of $500, the FAA had estimated that annual operating costs would increase $37,500. The 15-year total costs would be $375,000 ($265,000, present value). As no comments were made on the estimated costs of this provision, the FAA affirms its previous calculations. However, carrying them out for 15 years generates a cost of $570,000 ($346,000, present value).

Section 121.191—Engine Out En Route Net Flight Data. Although the FAA had not estimated a compliance cost for this provision in the Regulatory Evaluation for the NPRM, three commenters report that these data do not currently exist for 10-to-19-seat airplane models and there is a cost to developing these data. Based on those comments, the FAA determines that manufacturers' will incur a one-time first-year cost of $1,900 per type certificated model, resulting in a one-time first-year compliance cost of $24,700 for the 13 type-certificated airplanes.

Section 121.305(j)—Third Attitude Indicator. This section requires that a third attitude indicator be retrofitted on all affected airplanes (manufactured before March, 1997) within 15 years of the rule's effective date. Any affected airplane manufactured after March, 1997, must have the device. This device is not required under part 135 or part 23.

In the Regulatory Evaluation for the NPRM, the FAA had estimated that it would cost $16,000 for a retrofit that would add about 5 lbs. of weight while the annual maintenance, inspection, and replacement costs would be about 10 percent of the retrofitting costs. The FAA had also estimated it would cost $8,000 for an installation on a newly-manufactured airplane. The FAA had also determined that a third attitude indicator is standard equipment on the Beech 1900–D. The proposed rule had a 1-year compliance date. On that basis, the FAA had estimated that the 10-year cost would be $19.2 million ($18.4 million, present value).

The FAA estimates that the retrofitting cost will be $16,000 and will add 15 lbs. of weight to the airplane. To eliminate the potential for down time, operators will retrofit this device during one of the airplane's 200-hour scheduled checks. On that basis, the FAA expects that this device will be installed in half of the 58 SFAR 41C airplanes in scheduled passenger service during the 13th year and in the remaining half during the 14th year. On that basis, the FAA determines that the 15-year compliance cost will be $319,000 ($116,000, present value).

Section 121.308—Lavatory Fire Protection. This section requires each lavatory to have a smoke detector system connected to either: (1) a warning light in the flight deck; or (2) a warning light or an aural warning in the passenger cabin that can be readily detected by a flight attendant. Section 121.308(b) requires each lavatory to have a built-in automatic fire extinguisher in each of its disposal receptacles. These requirements are also found in section 25.854 but only for airplanes type certificated after 1991. There are no such provisions in part 135 or part 23.

On that basis, the FAA estimates that for the 20-to-30-seat airplanes, there will be a first-year compliance cost of $78,000 and an annual cost in each succeeding year of $45,000 to $58,000. The 15-year total cost will be $858,000 ($519,000, present value). In the Regulatory Evaluation for the NPRM, the FAA had estimated a 10-year total cost of $263,000 ($206,000, present value).

Section 121.310(l)—Flight Attendant Flashlight Holder. This section requires an emergency flashlight holder be available to the flight attendant. A flashlight holder is needed to keep the flashlight available and within reach of the flight attendant seat. This provision requires retrofitting within one year of the effective date of the rule. The FAA had not estimated any compliance cost for the flashlight holder in the Regulatory Evaluation for the NPRM. However, after additional analysis, the FAA found that there will be a per airplane cost of $50 for a retrofit and $25 for an installation on a newly-manufactured airplane. It will increase the airplane's weight by 2 lbs. In addition, there will be a one-time engineering design, development, and FAA approval cost of $250 for each type certificated model. As there are no flight attendants in 10-to-19-seat airplanes, no flight attendant flashlight will be required and there will be no compliance cost for those airplanes. For 20-to-30-seat airplanes, the first-year cost will be $42,000 and the annual cost thereafter will be between $2,000 and $6,000. The 15-year total cost will be $88,000 ($68,000, present value).

Section 121.312(b)—Passenger Seat Cushion Fire Blocking Materials. This section requires that 10-to-30-seat airplane seat cushions comply with the fire protection standards in Section 25.853(b) within 15 years. The proposed rule had allowed a two-year compliance period with an option for two additional years if there were demonstrated compliance difficulties.

In the Regulatory Evaluation for the NPRM, the FAA had assumed that this provision would affect only the 10-to-19-seat airplanes because the 20-to-30-seat airplanes are type-certificated under part 25, which requires fire-blocked seats for airplanes type-certificated after 1991. As those airplanes are used in both part 121 and part 135 service, the FAA believed that they have already been retrofitted and are being manufactured with fire blocking cushions. As there were no comments to the contrary, the FAA has retained that assumption.

In the Regulatory Evaluation for the NPRM for 10-to-19-seat airplanes, the FAA had estimated that it would cost $20,000 for a retrofit, $5,000 for installation on newly-manufactured airplanes, and fire blocking would add 2 lbs. per seat cushion. In addition, the FAA had believed that the incremental compliance costs from replacing a fire-blocked cushion with another fire-blocked cushion (due to normal wear and tear) would be only due to the difference in the costs of the fire-blocking material, which was estimated to be $5,000. There would be no incremental labor costs because it would take as long to replace a fire-blocked cushion with a fire-blocked cushion as it would take to replace a

non-fire-blocked cushion with a non-fire-blocked cushion. The FAA had also estimated that 10 percent of the 10-to-19-seat airplanes have fire blocked seats because they are offered as an option on currently manufactured models. Further, the FAA had estimated that it would cost $50,000 for engineering, developing, testing, and documenting the results for FAA approval for those airplanes no longer in production. Finally, allowing operators four years to comply means that they can schedule this retrofitting to fit into the normal cushion reupholstery schedule. Consequently, the existing cushions would not have been prematurely replaced before they would have been replaced due to normal wear and tear.

Based on information received from industry, the FAA estimates that the average retrofitting cost (weighted by the number of each type of airplane model in the existing fleet) will be $21,500 and the average new-installation cost (weighted by the number of new airplanes projected to be sold by each manufacturer) will be $4,875. The average weight of 38 lbs. (for a 19 seat airplane) results in a yearly per airplane fuel cost of $105. In addition, an industry source reports that airplane operators normally reupholster their seat cushions every four years. Further, the FAA estimates that there will be no engineering costs for current commuter category airplanes because all of the manufacturers offer the fire blocked seat cushions as an option and the engineering and FAA-approval costs have already been incurred. However, the FAA revises its engineering costs for each out-of-production airplane model from $10,000 to $5,000 because there are a sufficient number of fabrics that have been approved so that each manufacturer will not have to completely reengineer its seats.

In response to the increase in time (from 4 years to 15 years) to comply with the rule, the FAA assumes that no airplane that will be withdrawn from scheduled-passenger service during those 15 years will be retrofitted with fire-blocking-seat-cushion materials. Further, an operator of an existing airplane that will be employed in scheduled passenger service beyond the 15-year period will wait until the last moment (13 to 14 years) before performing the retrofit. Based on industry statements, commuter-category airplanes are being built with the expectation of a 25-to-30-year lifespan. Also based on industry statements, the initial cost (plus one or two cushion reupholsteries) is less than or about the same as a retrofit 10 or fewer years in the future. The FAA anticipates that beginning in 5 years, operators will only purchase new airplanes that have factory-installed-fire-blocked seat cushions. Over time, the compliance costs will increase because a greater number of these airplanes will carry the extra 38 lbs. of weight. On that basis, the annual compliance costs will begin at $150,000 in the sixth year after the effective date and increase to $1.25 million by the 13th year. The 15-year total will be $5.88 million ($2.55 million, present value).

Section 121.317(b)—Fasten Seat Belt Lighted Sign. This section requires that there be a lighted ''fasten seat belt'' sign that can be controlled by the pilot. In the Regulatory Evaluation of the Proposed Rule, the FAA had not estimated any compliance costs because it was believed that affected airplanes had these lighted signs. Based primarily on information received from industry, the FAA estimates that the total 15-year cost for the 2 lb. device will be $522,000 ($269,000, present value).

Section 121.342—Pitot Heat Indication System. This section requires all affected airplanes, within 4 years of the rule's effective date, to have a pitot heat indication system that indicates to the flight crew whether or not the pitot heating system is operating. Section 23.1323 requires a pitot heat system for most commuter category airplanes, but there are no requirements for a heat indication system.

In the Regulatory Evaluation for the NPRM, the FAA estimated a per airplane cost of $500 for a retrofit and $250 for installation on a newly-manufactured airplane. The FAA did not estimate a weight penalty or costs for inspection, maintenance, and repair, but it had estimated a one-time manufacturer cost of $10,000 for initial engineering design, testing, and documentation for FAA approval. On that basis, the FAA had estimated that the compliance cost during each of the first four years would be $280,000 and $10,000 per year thereafter. The 10-year total costs were estimated to be $1.184 million or $993,000, present value.

After additional analysis, the FAA is persuaded that its initial cost estimates need revision. Based on its analysis of the technology required to install these devices, the FAA determines that there is a per airplane cost of $4,000 for a retrofit and $2,000 for installation in a newly-manufactured airplane. However, the number of airplanes expected to be sold by the manufacturer who reported this device is standard equipment is subtracted from the expected number of newly-manufactured airplanes that will need to install this device. In addition, the associated equipment and wiring will add 5 lbs. to the airplane. Finally, there will be a $10,000 one-time cost to engineer, design, test, and obtain FAA approval for the manufacturer of each type certificate.

On that basis, the annual costs in each of the first 4 years will be between $515,000 and $535,000 and the annual costs in each year thereafter will be between $17,000 and $23,000. The 15-year total costs will be $2.29 million ($1.87 million, present value).

Section 121.349(c)—Distance Measuring Equipment. This section requires at least one approved distance measuring equipment (DME) unit within 15 months of the final rule publication date for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top. The FAA had estimated no compliance costs for this provision and there were no comments on this provision. After additional analysis, however, the FAA determines that some airplanes are affected by this requirement.

Based on the 1994 AOPA Pilot General Aviation Aircraft Directory and Avionics Directory and Buyer's Guide, the FAA estimates that the average price of a 25 lb. DME for an airplane is $7,000 and it will cost another $7,000 to retrofit for a total cost of $14,000. The FAA General Aviation and Air Taxi Activity and Avionics Survey for 1993 reports that 3.1 percent of the turboprops in service (twenty-three 10-to-19-seat airplanes and ten 20-to-30-seat airplanes) do not have this device but that all newly-manufactured airplanes will have this device installed. On that basis, the FAA estimates that the first-year-compliance cost is $434,000 ($294,000 for 10-to-19-seat airplanes and $140,000 for 20-to-30-seat airplanes) and the 15-year-compliance cost is $452,000 of which $303,000 is for 10-to-19-seat airplanes and $149,000 is for 20-to-30-seat airplanes ($418,000, present value of which $281,000 is for 10-to-19-seat airplanes and $137,000 is for 20-to-30-seat airplanes).

4. Maintenance

The FAA estimates that over the 15-year period, the total cost of compliance for the relevant maintenance sections affected by the final rule will amount to an estimated $18.18 million ($11.92 million, present value). A discussion of the individual maintenance costs is presented below.

Section 121.361 Applicability. The final rule requires all affected commuter operators to have an airplane maintenance program that is appropriate for part 121 operations. All part 135 commuters currently operating

under a part 135 continuous airworthiness maintenance program (CAMP) will be required to revise and possibly upgrade their programs in accordance with the new part 121 standards. Currently, commuter operators of airplane type-certificated with a passenger seating configuration of 10 seats or more operate under a CAMP as specified in section 135.411(a)(2). Most differences among the respective part 135 operators' CAMP' arise from the varying complexity of the different airplanes, not solely from the type of operation. Therefore, the only new requirement will be to revise and possibly upgrade part 135 operators' existing CAMP's, not to develop entirely new maintenance programs.

The FAA estimates the one-time total compliance cost of the maintenance applicability section is $104,000. Of this total, $63,000 will be incurred by operators of 10-to-19-seat airplanes and $41,000 will be borne by operators of 20-to-30-seat airplanes. The FAA assumes, based on information received from its technical personnel, that an average of 80 hours will be required of each affected operator's maintenance shop foreman to review an operators' CAMP to ensure compliance with the final rule. Assuming a loaded hourly wage of $20.58 for a maintenance foreman, the one-time cost estimate for each operator will be approximately $1,650 (80×$20.58).

Section 121.377 Maintenance And Preventive Maintenance Personnel Duty Time Limitations. The final rule will require all commuter operators to adhere to the part 121 limitation of time that maintenance and preventive maintenance personnel can be required to remain on duty. Section 121.377 requires maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any one calendar month. Maintenance and preventive maintenance personnel employed by part 135 operators have no such duty time limitation.

The FAA maintained in the NPRM that simple adjustments in work scheduling or duty requirements of maintenance personnel were on-going costs of doing business which would not be affected by the commuter rule. Furthermore, the FAA held that the existence of union work rules, Department of Labor regulations and the generally accepted notion of a ''day of rest'' would be sufficient to limit the amount of time that part 135 maintenance and preventive maintenance personnel remained on duty. The FAA, therefore, did not estimate any incremental costs associated with this section, and treated it as one not contributing to the total maintenance costs.

For the final rule, in considering the unique operating environment of Alaska, the FAA has determined that imposing the requirements of the maintenance and preventive-maintenance-personnel-duty-time limitations for part 121 operators onto part 135 operators will be a cost factor. The cost for the Alaskan operators is $312,000 per year for all Alaskan 10-to-19-seat airplane operators. This cost estimate was provided by the Alaskan Air Carriers Association (AACA) and adopted by the FAA for this analysis. For the remaining operators, the annual cost is an estimated 80 hours per year at $20.44 per hour for the maintenance foreman to perform the additional scheduling necessary to comply with the rule. The FAA estimates that a maintenance foreman will spend approximately 80 additional hours per year to meet the part 121 standards. Thus, the cost for non-Alaskan 10-to-19-seat operators in 1996 will be 23 operators × $20.58 × 80 hours or $37,870. For 20-to-30-seat seat operators, the cost in 1996 will be 25 operators × $20.58 × 80 hours or $41,000. The calculations would be the same in subsequent years.

Over the 15-year period, the total cost imposed due to the new duty-time-limitation requirement will be approximately $6.02 million ($3.65 million, present value). Most of this cost, $4.68 million, falls on Alaskan part 135 operators of 10-to-19-seat airplanes. This disproportionate amount reflects the probable added labor requirements of Alaskan operators owing to the uniqueness of the Alaskan operating environment.

Section 121.380 Maintenance Recording Requirements. This section provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. It further specifies the length of time records must be retained and the requirements for records to be transferred with the airplane at the time the airplane is sold. Section 121.380a, Transfer Of Maintenance Records, develops the transfer of records in more detail. It requires the certificate holder to transfer certain maintenance records to the purchaser, at the time of sale, in either plain language or coded form which provides for the preservation and retrieval of information. The section ensures that a new owner receives all records that are to be maintained by an operator as required under section 121.380.

In the NPRM, the FAA maintained that because section 135.439 was essentially identical to 121.380, there would be minimal new recordkeeping requirements imposed on part 135 operators and thus, assumed no incremental costs would result from changes to this section. The FAA also maintained that there would be no incremental cost impact resulting from changes to part 121.380a. Upon review of the proposal and subsequent comments received, the FAA has determined that the merging of the recordkeeping requirements of sections 121.380 and 135.439 brought on by the commuter rule will involve incremental administrative costs. The FAA therefore, has revised its NPRM position of no costs, and estimated the administrative costs for the new requirements incorporated in the changes to sections 121.380, 121.380a and 135.439.

The cost was derived from averaging the total recording cost for Alaskan commuter airplanes as provided by the AACA and applied to the total 10-to-19-seat airplane fleet. The AACA estimated the total first-year cost for Alaska operators to be $156,000. This was divided by the number of 10-to-19-seat airplanes in Alaska (44) for an average cost of $3,545 per airplane. This was then multiplied by the total number of airplanes in the 1996 U.S. fleet. In 1996, the number of airplanes will be 629 (673–44), 44, and 277 for 10-to-19-seat non-Alaska airplanes, 10-to-19-seat Alaska airplanes, and 20-to-30-seat airplanes respectively. For subsequent years, the additional reporting cost will be $26,000 for the 10-to-19-seat airplanes in Alaska. The FAA divided that cost by the number of Alaskan airplanes (44) and then multiplied it by the total U.S. fleet. Thus, in 1997 the fleet count is 639 (683–44) 10-to-19-seat non-Alaska airplanes and 307 20-to-30-seat airplanes. The total costs for 1997 are $26,000 for Alaska, $377,590 ($26,000/44×639) for 10-to-19-seat non-Alaska, and $181,409 ($26,000/44×307) for 20-to-30-seat airplanes. The same procedure is used for the remaining years. The total cost imposed on operators of part 135 airplanes due to the additional recordkeeping required to merge parts 121 and 135 maintenance recording requirements is approximately $11.5 million ($7.8 million, present value) for the 15-year period.

As a final point, this rule will impose costs on some part 121 operators by requiring them to maintain information on engine and propeller time in service as specified in section 135.439/121.380.

The FAA concurs with a commenter's objection that for the few operators of older, part 121 propeller-driven airplanes, this will necessitate a substantial search-cost for historical records. In this instance the costs will not be borne by part 135 operators who, for the most part, utilize propeller-driven airplanes, but rather, by a few part 121 operators who do not utilize jet-driven airplanes. However, in the final rule, the FAA will make this requirement prospective only; those part 121 operators of propeller-driven airplanes will be required to maintain information on engine and propeller time in service only from the date of the first overhaul of the engine or propeller as applicable. Thus, this new requirement should only impose negligible costs on these part 121 operators.

5. Part 119

Part 119 is a new part that consolidates the certification and operations specifications requirements for persons who operate under parts 121 and 135. Most of these regulations are currently in SFAR 38–2; therefore, moving them to part 119 would not impose any additional cost. However, some sections currently under parts 121 and 135 would be moved to part 119. The costs imposed on affected operators by those sections are presented below. Over 15 years, the costs of these provisions are estimated to be $3.36 million ($2.30 million, present value).

Sections 119.33(c) and 121.163—Proving Tests. When an operator changes the type of operation it conducts or purchases an airplane that is new to a certain type of operation, that operator must undertake a proving test. A proving test generally consists of a non-passenger flight in which the operator proves that it is capable of safely conducting that type of operation or airplane. Going from a part 135 operation to a part 121 operation would be a change in operation and be subject to a proving test. Under the final rule, there would be two costs associated with proving tests—initial and recurring. The initial cost would be proving tests for upgrading the existing part 135 fleet that would become part 121. The recurring costs would be for any future operational or airplane changes that would normally require a proving test (as required by the existing rule).

The current regulation prescribes 50 hours of flight for a part 121 (section 121.163(b)(1)) proving test. This is the number that part 135 operators switching to part 121 will be subject to. However, the current rule also allows for deviations from the 50-hour requirement. A sample of FAA records on proving tests shows that, since 1991, there has been a wide range of hours actually flown for proving tests. This is because the amount that the operator is allowed to deviate from the prescribed number of hours is based on what that operator requests and on what the FAA will allow. However, based on the above sample, the FAA assumes for the purposes of this analysis that the average deviation will be down to a total of 15 hours.

The FAA recognizes that some operators who currently operate under a split certificate already have experience operating under part 121. Also, some part 135 operators already voluntarily comply with part 121 requirements for much of their operation. To the extent practicable, for these and possibly other operators, the FAA will not require a proving flight. However, some operators who will have to make significant changes to the operation as a result of the final rule will have to have a proving flight. The FAA anticipates that 50 percent of the estimated number of proving tests will not have to include a proving flight. The only cost to these operators will be the preparation and completion of the test for the dispatch system. For this analysis, the FAA assumes three days preparation for the manager, maintenance director, and secretary.

For those operators who must take the proving test, the cost will be the same three days preparation plus the 15 hours of flight time. The FAA estimates that the 15 hours of proving test flights will cost the operator approximately $8,560 for a 20-to-30-seat airplane and $7,000 for a 10-to-19-seat airplane. The difference in cost is due to the flight attendant being on board in the 20-to-30-seat airplanes.

The FAA estimates that there will be 90 proving tests necessary in 1996 to bring the existing fleet up to part 121 standards (assuming a proving test for each type of airplane for each part 135 carrier affected by the final rule.) The cost to the 60 part 135 operators in 1996 to complete the initial 90 proving tests would be approximately $393,660 ($367,900, present value). Of this cost, approximately $128,300 would be incurred by operators with 20-to-30-seat airplanes and $265,360 by operators with 10-to-19-seat airplanes.

The recurring costs would accrue over the next 15 years as affected operators conduct part 121 proving tests instead of part 135 proving tests. If the prescribed number of hours for part 135 and part 121 operators is 25 and 50 respectively, and the average deviation is 50 percent, then the difference in hours would be 13 [(50–25) × .5]. Also, the FAA found from the survey of its records that, on average, operators conduct one proving test every four years, which equates to approximately 3 tests over the 15-year period.

The average number of operators in any given year over the next 15 years is 68. Based on this, the FAA will conduct approximately 14 ((68 operators × 3 tests)/15 years) proving tests annually: 8 for 10-to-19-seat airplanes and 6 for 20-to-30-seat airplanes. The FAA estimates that the increased cost of a proving test per part 135 operator would be $6,050 for a 20-to-30-seat airplane and $5,800 for a 10-to-19-seat airplane. For all affected operators, the final rule will impose approximately $82,700 annually in additional costs for proving tests. Over the next 15 years, the total recurring cost of this provision would be $1.24 million ($0.75 million, present value).

Sections 119.65, 119.67, 119.69, and 119.71—Directors of Maintenance, Operations, and Safety; Chief Inspector; and Chief Pilot. The existing requirements for establishing and the eligibility of management personnel only apply to part 135 operators (excluding those that use only one pilot) and supplemental and commercial part 121 operators. The final rule will expand the applicability of the requirement for management positions to all part 121 operators as well. However, the FAA contends that part 121 operators, by the very nature and size of their operations, already have personnel in these positions (or the equivalent of these positions). Thus, there will be no cost to incorporate part 121 operators under these requirements.

There are three other potential cost areas for the management positions required in the final rule. First, is the new recency of experience for first time Directors of Operations and Maintenance. Second, is the new Director of Safety position for both part 121 and part 135 operators. Third is the Chief Inspector, which will be a new position for those part 135 commuters who upgrade to part 121.

Recency of Experience. The final rule will impose new recency of experience requirements for those Director of Maintenance and Operations candidates who will have that title for the first time. In addition to other requirements, these candidates will have to have three years of experience (within their respective fields) within the past six years to be eligible for a Director position. This will ensure that those candidates who do not have any experience as a Director at least have

recent on-the-job experience in their respective fields.

The potential cost of the recency of experience requirement is the reduction at any given time in the number of first-time candidates available for these positions. This is because some first-time candidates may have to acquire additional years of experience if they do not have it at the time that they are being considered for a Director position. It is extremely difficult to project how many future first-time Director candidates will be affected by the final rule. However, this will have little if any effect on an operator's ability to find potential applicants to fill a Director position. This is for three reasons. First, the FAA contends that the number of potential candidates who do not meet the recency of experience requirement both now and in the future is small in relation to the total number of potential applicants for a Director position. Second, the FAA contends that the supply of existing personnel who would qualify for a Director position, plus those who are already a Director, is sufficient to keep wages from increasing as a result of the new qualification requirements. Further, the new requirements are not substantive enough to cause wages to increase. Third, operators can always request authorization from the FAA to hire an applicant who has comparable experience. For the initial upgrade to part 121, the FAA will approve these authorizations to the extent practicable. Thus, the FAA contends that the final rule will not impose a hardship on operators in having enough potential qualified applicants to fill the Director positions.

Director of Safety. This is a new position for part 121 but the FAA contends that this position will impose little if any additional cost to operators. The rationale for this assessment is based on two factors: (1) There are no eligibility requirements for the Director of Safety so virtually anyone can be designated as such; and (2) most operators already have a Director of Safety or the equivalent.

Chief Inspector. For existing part 135 commuter operators who will now operate under part 121, the position of Chief Inspector will be new. The FAA contends that this requirement will impose little if any additional cost. Many part 135 operators already have personnel that are the equivalent of a Chief Inspector. The operator may petition the Administrator to combine positions or request authorization to appoint someone who has comparable experience. For the initial upgrade to part 121, the FAA will consider these requests on a case-by-case basis.

On-Demand Operators Conducting Scheduled Operations. Under part 135, on-demand operators will be allowed to conduct up to four scheduled operations a week and still remain an on-demand operator. There is no such allowance in part 121. Thus, if a current on-demand operator conducts even one scheduled passenger flight with a 10-to-30-seat airplane, then that airplane must be upgraded to and the operation flown under part 121. The FAA has identified 5 airplanes in the current fleet with 10 to 19 seats that are used by on-demand operators in scheduled service. To bring these airplanes up to the part 121 standards will cost approximately $1.73 million ($1.18 million, present value). The components behind this estimate are provided below (explanations of these costs components are provided in their respective sections).

C. Benefits

The commuter segment of the U.S. airline industry is a vital and growing component of the nation's air transportation system. Commuter airplanes transport passengers between small communities and large hubs, and they play a vital role in transporting passengers over short distances, regardless of airport or community size. In many cases, they are a community's only convenient link to the rest of the nation's air transportation system.

Over the past 15 years, the size of the commuter industry has grown considerably. In 1993, for example, enplanements for commuter carriers grew by over 10 percent, far outpacing the one percent growth of enplanements on larger carriers. Forecasts of commuter industry activity give every indication that growth in this segment of the airline industry will continue to be robust during the next 15 years.

Many commuter carriers operate in partnership with large air carriers, providing transportation to and from hub locations that would be unprofitable with larger airplanes. These partnerships frequently operate within a seamless ticketing environment, in which the large carrier issues a ticket that often includes a trip segment on a commuter airplane. As these relationships between large carriers and commuter airlines continue to grow, it will become more common for the average long distance flyer to spend at least one flight segment on commuter airplanes.

The combined effect of a continuing growth in the commuter industry and the ever growing relationship between large carriers and their commuter counterparts will progressively blur the distinction between commuter carriers and larger air carriers. In other words, passengers will no longer readily distinguish between one type of carrier and another, but will simply view each component as a part of the nation's air transportation system. It is imperative, therefore, that a uniform level of safety be afforded the traveling public throughout the system. Air carrier accidents, perhaps more than accidents in any other mode, affect public confidence in air transportation.

What is the public value or benefit of air transportation? It would be nearly impossible to calculate something that has been so widely accepted in the American lifestyle. One figure that represents the very least value the public places on traveling by air is the annual amount the public spends on air transportation, or in other words, annual air carrier revenues. In 1994, the FAA estimated that amount to be $88 billion. If public confidence wavers by only one percent, annual total air carrier revenues would be reduced by $880 million, which is a minimum dollar estimate of the cost that would be experienced by the public in terms of being denied a fast, safe means of transportation.

Some studies have been done to measure the effect of change in public confidence. In 1987, the FAA studied the impact of terrorist acts on air travel on North Atlantic routes. The study investigated the relationship between the amount of media attention given to a specific terrorist act and reductions in air traffic. The study concluded that there was a measurable, short-term, carrier-specific correlation between the two. Following a well-publicized incident, ridership on the carrier experiencing the incident dropped by as much as 50 percent for a few months. In another instance, a major air carrier reported that two catastrophic accidents in 1994 resulted in a half-year-revenue loss to that carrier of $150 million. These examples relate to carriers operating large airplanes, but they illustrate how the prevailing level of public confidence can affect the public use of air transportation.

It is clear that the American public demands a high degree of safety in air travel. This is manifested by the large amount of media attention given to the rare accidents that do occur, by the short term reductions in revenues carriers have experienced following accidents or acts of terrorism, and by the pressure placed on the FAA as the regulator of air safety to further reduce accident rates.

The FAA is confident that the final rule will further reduce air carrier accidents. The final rule will require dozens of changes to the way that smaller air carrier airplanes are built, maintained, and operated—all aimed at eliminating or at the very least minimizing the differences between small and large airplanes and the way they operate. Many of these changes result in small, unmeasurable safety improvements when examined in isolation, but taken together result in a measurable difference. That measurable difference ultimately is to bring commuter accident rates down to the very low level of that of the larger carriers. That rate is nearing the point of rare, random events.

What follows is a quantified analysis of the potential benefits of the final rule based on the assumption that it will reduce the number of commuter airplane accidents and (possibly mitigate the severity of those casualties in accidents that will occur). The analysis finds that measurable potential benefits substantially exceed the cost of the final rule, but the FAA believes that the larger but unquantifiable benefit is continued public confidence in air transportation.

Safety Benefits From Preventing Accidents. The intent of the Commuter Rule is to close, to the extent practicable, the accident rate gap between airplanes with 10 to 30 seats currently operating under part 135 and airplanes with 31 to 60 seats operating under part 121. The smaller ''commuter-type'' part 121 airplanes were used for comparison because their operations best resemble those of commuters than do larger part 121 airplanes. If the accident rate gap were completely closed, the FAA estimates that up to 67 accidents involving airplanes with 10 to 30 seats could be prevented from 1996 to 2010. This would generate a benefit of $588 million, with a present value of $350 million.

Typically, the FAA estimates aviation safety benefits based on rates of specific types of accidents that the rulemaking would prevent in the future. For this rulemaking, however, the FAA used a more broad-based accident rate. This approach was adopted because the scope of the various components of the rule covers such a wide range, and many of those components are interrelated.

To estimate the benefits of the rule, the FAA assembled a database of applicable part 121 and part 135 accidents between 1985 and 1994 using National Transportation Safety Board (NTSB) accident reports. These accidents were categorized by the passenger seating configuration of the airplanes involved—10 to 19, 20 to 30, and 31 to 60. The FAA then divided the annual number of accidents by the annual number of scheduled departures for each group to derive the annual accident rates. After calculating the 10-year historical average accident rates, the FAA took the difference in the accident rates between the part 135 airplanes and the part 121 airplanes. The difference in rates was then multiplied by the projected annual number of scheduled part 135 departures of airplanes with 10 to 19 seats and 20 to 30 seats from 1996 to 2010. Each step of this estimation procedure is described in detail below.

The Accident Database. The NTSB defines an accident as an occurrence associated with the operation of an airplane which takes place between the time any person boards the airplane with the intention of flight and the time such that persons have disembarked, and in which any person suffers death or serious injury or in which the airplane receives substantial damage. The FAA looked at only those accidents for which the final rule could have an effect. Accidents in which the probable cause was undetermined, the result of turbulence, or was related to the ground crew were not included in the database. The FAA also excluded midair collisions, since the current airspace rules (Mode C, TCAS, positively-controlled-airspace areas, etc.) would not be affected by the final rule. Finally, the FAA excluded accidents involving unscheduled and all-cargo operations.

Annual Accident Rate. Based on the annual number of accidents from the database and the annual number of departures, the FAA estimated the accident rates for 10-to-30-seat airplanes operating under part 135 and 31-to-60-seat airplanes operating under part 121. From 1986 to 1994, the FAA found that part 135 airplanes with 10 to 19 seats were involved in accidents at a rate of .32 accidents per 100,000 departures and airplanes with 20 to 30 seats occurred at an average rate of .17 accidents per 100,000. Accidents involving part 121 airplanes with 31 to 60 seats had an average accident rate of .13 accidents per 100,000 departures.

The Average Cost of a Part 135 Accident. From the accident database discussed above, the FAA found that the average part 135 accident involving 10-to-19- and 20-to-30-seat airplanes cost $6.3 million and $24.6 million, respectively.

Estimating Potential Benefits. To estimate the benefit of closing the accident-rate gap between part 135 and part 121 airplanes, the FAA took the difference in average accident rates for 10-to-30-seat part 135 airplanes and 31-to-60-seat part 121 airplanes and multiplied them by the projected annual number of departures for 10-to-30-seat part 135 airplanes. This gives the projected annual number of accidents that the final rule could prevent. The FAA estimates that, from 1996 to 2010, 67 accidents could be prevented. Multiplying the number of potential accidents by the average cost of a part 135 accident ($6.3 million for 10-to-19-seat airplanes or $24.6 million for 20-to-30-seat airplanes) results in total potential benefits of $588.2 million ($350 million, present value).

The extent to which the accident rate gap closes will determine how much of the $350 million in potential benefits is actually achieved. Based on the scope of the final rule, the FAA anticipates a significant closing of this gap.

D. Comparison of Costs and Benefits

Over the next 15 years, the Commuter Rule will impose total costs of $117.80 million, with a present value of $75.19 million. Of the total costs, $80.36 million will be for airplanes with 10 to 19 seats and $37.44 million will be for airplanes with 20 to 30 seats.

The benefit of the Commuter Rule is its contribution to closing the accident rate gap between part 121 and existing part 135 commuter operators. The FAA estimates that closing this gap will prevent 67 accidents over the 15 year period for a total present value benefit of $350 million. It is not certain how much of the accident-rate gap the final rule will close. In view of this uncertainty, the FAA contends that the final rule will be cost-beneficial because it will have to be only 21 percent effective for costs to equal benefits. Given the broad scope of the rule, the FAA anticipates that, at a minimum, the rule will be this effective and more.

One additional observation needs to be made. The FAA considers the Commuter Rule to be complementary to the Air Carrier Training Program final rule and the Flight Crewmember Duty Period Limitations and Rest Requirements NPRM. A common goal of these three rulemaking actions is to prevent the 67 accidents that represent the accident-rate gap between part 135 commuters and part 121 operators.

In terms of the accident-rate gap, the benefits of the Commuter Rule are a part of this total benefit. However, it is not possible to allocate that benefit among the three rulemaking actions because it is difficult to determine which rulemaking action would prevent a given accident. For example, individual accidents may be prevented by any one

or a combination of several factors such as:

- Preventing the occurrence of a problem with an airplane in the first place (Commuter rule);
- Providing more or better crew training to properly respond to the problem after it occurs (Air Carrier Training Program rule);
- Providing a dispatcher to help identify a problem before it becomes a potential accident (Commuter rule); and
- Ensuring pilots are not over-worked and tired (The Rest and Duty NPRM).

The Commuter Rule only addresses a portion of the necessary requirements to close the accident-rate gap. If the $75 million present value cost of this rule is combined with the $51 million in cost-savings of the Flight and Duty NPRM, and the cost of Pilot Training, $34 million, the total cost, $58 million ($34 −$51+$75), is still less than the estimated $350 million benefit of eliminating the accident-rate gap. These rules combined need only be 17 percent effective to be cost-beneficial.

E. International Trade Impact Assessment

Overview. The final rule will have a minimal effect on international trade. Although there are a number of across-the-border commuter services between the U.S., Canada, and Mexico, they represent a small number of routes and airplanes. The only other concern with regard to international trade is airplane sales. There is the potential that increased equipment requirements and standards may limit the ability of commuter airplanes manufactured for the U.S. market to be resold to buyers in developing nations. Often, these countries do not have extensive safety requirements and may prefer less sophisticated airplanes.

International Routes. Most of the nation's 63 commuter airlines operate almost exclusively on domestic routes, with only limited international operations and no transoceanic routes. The majority of these international operations are across-the-border services between cities in the United States and locations in Canada and Mexico. There are relatively few carriers engaging in this kind of commuter service, with only a limited number of flights. Most of these services are between points in the border states, such as California, Arizona, Texas, Wisconsin, Michigan, Washington, and New York, flying to Mexican and Canadian cities. Although the final rule may require some foreign carriers to comply with its requirements, the primary effect will still be borne by the domestic air carrier market with a minimal affect on international trade.

Airplane Sales. Commuter airplanes are sold on a worldwide basis, and this creates the potential for international trade impacts. The final rule could affect the competitiveness of airplanes made for the U.S. market that are resold internationally. Under the final rule, commuter airplanes made for the American market would include new equipment and upgrades necessary to meet expanded safety requirements. These improvements will increase the cost and maintenance requirements for the airplane and could negatively affect their sales potential in foreign markets, particularly to customers in developing nations.

Many small air carriers in the developing world fly under significantly lower safety requirements than are required in the United States. Operators are generally not motivated to purchase airplanes that exceed their countries' minimum requirements. Further, these operators sometimes lack the facilities, equipment, and expertise that are necessary to keep sophisticated systems operational. Therefore, when purchasing either new or second-hand airplanes, operators tend to focus on airplanes that rely on a minimum of complex systems and equipment and that meet their basic requirements at the lowest cost.

Although sales of smaller airplanes to the developing countries represent an important component of the market, the largest market by far is in North America. In this case, since the airplanes will have to operate under the same standards as before their resale, there would be no impact. According to recent estimates, the worldwide market for commuter airplanes is estimated to be almost $20 billion over the next 15 years, with a projected 59 percent of those sales occurring in North America. Sales to Europe account for approximately 20 percent of the total sales.

F. Regulatory Flexibility Determination Summary

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have ''a significant economic impact on a substantial number of small entities.'' The definitions of small entities and guidance material for making determinations required by the Regulatory Flexibility Act of 1980 are contained in the Federal Register [47 FR 32825, July 29, 1982]. Federal Aviation Administration (FAA) Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. With respect to the final rule, a ''small entity'' is defined as a commuter operator (with 10 to 30 seats) that owns, but does not necessarily operate nine or fewer airplanes. A ''significant economic impact on a small entity'' is defined as an annualized net compliance cost to a small scheduled commuter operator that is equal to or greater than $67,000 (1994 dollars). The entire fleet of a small scheduled commuter operator has at least one airplane of seating capacity of 60 or fewer seats. The annualized net compliance cost to a small operator whose entire fleet has a seating capacity of over 60 seats is $119,900 (1994 dollars). A substantial number of small entities is defined as a number that is 11 or more and that is more than one-third of small commuter operators subject to the final rule.

The FAA is requiring certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that will be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The rule will revise the requirements concerning operating certificates and operations specifications. The rule will also require certain management officials for all operators under parts 121 and 135. The rule will increase safety in scheduled passenger-carrying operations and clarify, update, and consolidate the certification and operations requirements for persons who transport persons or property by air for compensation or hire.

The total present value cost to small entities with 10-to-19-seat airplanes is $16.7 million. The section on operations represents $10.1 million or 64 percent of the total. The section on maintenance represents $4.0 million or 24 percent of the total. The total present value cost to small entities with 20-to-30-seat airplanes is $4.0 million. The section on operations represents $2.9 million or 73 percent of the total. The section on part 119 represents $416,000 or 10.4 percent of the total.

This determination shows that for an operator with only 10-to-19-seat airplanes, the average annualized cost will be $61,900 and for an operator with 20-to-30-seat airplanes, the average annualized cost will be $35,600. Given the threshold annualized cost of $67,000

for a small commuter operator (with 60 or fewer seats), the FAA estimates that this final rule will not have a significant economic impact on a substantial number of small entities. A complete copy of the Regulatory Flexibility Determination is in the public docket.

Federalism Implications

The regulations do 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 various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by the Office of Management and Budget, until December 1998, in accordance with 44 U.S.C. Chapter 35 under OMB No. 2120–0593, TITLE: Commuter Operations and General Certification and Operations Requirements.

Conclusion

For the reasons set forth under the heading ''Regulatory Analysis,'' the FAA has determined that this regulation: (1) Is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings ''Trade Impact Statement'' and ''Regulatory Flexibility Determination,'' the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

IX. The Amendments

In consideration of the foregoing and under the authority of 49 U.S.C. 44702, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR parts 91, 119, 121, 125, 127, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is changed to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180). 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation No. 50–2 is amended by removing the words ''part 135'' from paragraph (c)(2) of section 3 and by revising section 6 to read as follows:

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 6 *Commercial sightseeing flights.* (a) Non-stop sightseeing flights that begin and end at the same airport, are conducted within a 25-statute-mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of SFAR 38–2 of part 119, part 121, and 135 of this chapter, as applicable.

(b) No person holding or required to hold an air carrier certificate or an operating certificate under SFAR 38–2 or part 119 of this chapter may operate an aircraft having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

* * * * *

3. Special Federal Aviation Regulation No. 71 is amended by revising section 1 and the introductory text of section 7 to read as follows:

SFAR No. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135. This rule does not apply to:

(a) Operations conducted under 14 CFR part 121 in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(b) Flights conducted in gliders or hot air balloons.

* * * * *

Section 7. Passenger briefing. Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in 14 CFR 91.107, 121.571, or 135.117:

* * * * *

4. The heading of subchapter G is revised to read as follows:

SUBCHAPTER G—AIR CARRIERS AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

5. A new part 119 is added to 14 CFR chapter I, subchapter G, to read as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.
119.1 Applicability.
119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of 14 CFR part 121.
119.3 Definitions.
119.5 Certifications, authorizations, and prohibitions.
119.7 Operations specifications.
119.9 Use of business names.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.
119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.
119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

119.31 Applicability.
119.33 General requirements.
119.35 Certificate application.
119.37 Contents of an Air Carrier Certificate or Operating Certificate.
119.39 Issuing or denying a certificate.
119.41 Amending a certificate.

119.43 Certificate holder's duty to maintain operations specifications.
119.45 [Reserved]
119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.
119.49 Contents of operations specifications.
119.51 Amending operations specifications.
119.53 Wet leasing of aircraft and other arrangements for transportation by air.
119.55 Obtaining deviation authority to perform operations under a U.S. military contract.
119.57 Obtaining deviation authority to perform an emergency operation.
119.58 Emergencies requiring immediate decision and action.
119.59 Conducting tests and inspections.
119.61 Duration and surrender of certificate and operations specifications.
119.63 Recency of operation.
119.65 Management personnel required for operations conducted under part 121 of this chapter.
119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.
119.69 Management personnel required for operations conducted under part 135 of this chapter.
119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

Subpart A—General

§ 119.1 Applicability.

(a) This part applies to each person operating or intending to operate civil aircraft—

(1) As an air carrier or commercial operator, or both, in air commerce; or

(2) When common carriage is not involved, in operations of U.S.-registered civil airplanes with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.

(b) This part prescribes—

(1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;

(2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under part 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;

(3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;

(4) Requirements affecting wet leasing of aircraft and other arrangements for transportation by air;

(5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and

(6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.

(c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by part 119, 121, 125, or 135 of this chapter.

(d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights conducted with aircraft having a passenger seat configuration of 30 or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, for nonstop sightseeing flights for compensation or hire conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2 of this part and SFAR 38–2 of 14 CFR part 121 or 14 CFR part 119, as applicable, apply;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;

(ii) Each flight is made under day VFR conditions;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under part 133 of this chapter or 375 of this title;

(9) Emergency mail service conducted under 49 U.S.C. 41906; or

(10) Operations conducted under the provisions of § 91.321 of this chapter.

§ 119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of 14 CFR part 121.

(a) Each certificate holder that before January 19, 1996 was issued an air carrier certificate or operating certificate and operations specifications under the requirements of part 121, part 135, or SFAR 38–2 of part 121 of this chapter shall continue to comply with SFAR 38–2 of 14 CFR part 121 until March 20, 1997 or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. If a certificate holder is issued operation specifications in accordance with part 119 before March 20, 1997 then, notwithstanding all provisions in SFAR 38–2 of 14 CFR part 121, such certificate holder shall comply with the provisions of part 119.

(b) Each person who on or after January 19, 1996 applies for or obtains an initial air carrier certificate or operating certificate and operations specifications to conduct operations under part 121 or 135 of this chapter shall comply with this part notwithstanding all provisions of SFAR 38–2 of 14 CFR part 121.

§ 119.3 Definitions.

For the purpose of subchapter G of this chapter, the term—

All-cargo operation means any operation for compensation or hire that is other than a passenger-carrying

operation or, if passengers are carried, they are only those specified in §§ 121.583(a) or 135.85 of this chapter.

Certificate-holding district office means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week or at least one route between two or more points according to the published flight schedules:

(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(2) Rotorcraft.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

Domestic operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

Empty weight means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Flag operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia.

(iii) Between any point outside the U.S. and another point outside the U.S.

Justifiable aircraft equipment means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

Maximum payload capacity means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flight crewmembers—180 pounds.

(B) For female flight crewmembers—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds or the oil capacity as specified on the Type Certificate Data Sheet.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

Maximum zero fuel weight means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

Noncommon carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, or a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum

passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat and any turbojet powered airplane, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or

(ii) All-cargo operations.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

When common carriage is not involved or operations not involving common carriage means any of the following:

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

(4) Private carriage.

§ 119.5 Certifications, authorizations, and prohibitions.

(a) A person authorized by the Administrator to conduct operations as a direct air carrier will be issued an Air Carrier Certificate.

(b) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations when common carriage is not involved as an operator of U.S.-registered civil airplanes with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

(d) A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(e) A person authorized to engage in noncommon or private carriage under part 125 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(f) A person conducting operations under more than one paragraph of §§ 119.21, 119.23, or 119.25 shall conduct those operations in compliance with—

(1) The requirements specified in each paragraph of those sections for the kind of operation conducted under that paragraph; and

(2) The appropriate authorizations, limitations, and procedures specified in the operations specifications for each kind of operation.

(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

(h) A person holding an Operating Certificate authorizing noncommon or private carriage operations shall not conduct any operations in common carriage. A person holding an Air Carrier Certificate or Operating Certificate authorizing common carriage operations shall not conduct any operations in noncommon carriage.

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

(j) A certificate holder under this part may not operate aircraft under part 121 or part 135 of this chapter in a geographical area unless its operations specifications specifically authorize the certificate holder to operate in that area.

§ 119.7 Operations specifications.

(a) Each certificate holder's operations specifications must contain—

(1) The authorizations, limitations, and certain procedures under which each kind of operation, if applicable, is to be conducted; and

(2) Certain other procedures under which each class and size of aircraft is to be operated.

(b) Except for operations specifications paragraphs identifying authorized kinds of operations, operations specifications are not a part of a certificate.

§ 119.9 Use of business names.

(a) A certificate holder under this part may not operate an aircraft under part 121 or part 135 of this chapter using a business name other than a business name appearing in the certificate holder's operations specifications.

(b) Unless otherwise authorized by the Assistant Administrator for Civil Aviation Security, no person may operate an aircraft under part 121 or part 135 of this chapter unless the name of the certificate holder who is operating the aircraft is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the

aircraft and its readability must be acceptable to the Administrator.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter

§ 119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.

(a) Each person who conducts operations as a direct air carrier or as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

(1) Domestic operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a showing of safety in air commerce, the Administrator may permit persons who conduct domestic operations between any point located within Alaska's Aleutian Islands chain and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter.

(2) Flag operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of safety in air commerce, the Administrator may authorize or require the following operations to be conducted under paragraph (a) (1) or (2) of this section:

(i) Passenger-carrying operations which are conducted between points that are also served by the certificate holder's domestic or flag operations.

(ii) All-cargo operations which are conducted regularly and frequently between the same two points.

(4) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(5) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) Persons who are subject to the requirements of paragraph (a)(4) of this section may conduct those operations in accordance with the requirements of paragraph (a)(1) or (a)(2) of this section, provided they obtain authorization from the Administrator.

(c) Persons who are subject to the requirements of paragraph (a)(5) of this section may conduct those operations in accordance with the requirements of paragraph (a)(3) of this section, provided they obtain authorization from the Administrator.

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with airplanes having a passenger-seat configuration of 20 seats or more, excluding each crewmember seat, or a payload capacity of 6,000 pounds or more, shall, unless deviation authority is issued—

(1) Comply with the certification and operations specifications requirements of part 125 of this chapter;

(2) Conduct its operations with those airplanes in accordance with the requirements of part 125 of this chapter; and

(3) Be issued operations specifications in accordance with those requirements.

(b) Each person who conducts noncommon or private carriage operations for compensation or hire with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds shall—

(1) Comply with the certification and operations specifications requirements in subpart C of this part;

(2) Conduct those operations in accordance with the requirements of part 135 of this chapter, except for those requirements applicable only to commuter operations; and

(3) Be issued operations specifications in accordance with those requirements.

§ 119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations specifications requirements of Subpart C of this part, and shall conduct its:

(a) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of This Chapter

§ 119.31 Applicability.

This subpart sets out certification requirements and prescribes the content of operations specifications and certain other requirements for operations conducted under part 121 or part 135 of this chapter.

§ 119.33 General requirements.

(a) A person may not operate as a direct air carrier unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Air Carrier Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(b) A person other than a direct air carrier may not conduct any commercial passenger or cargo aircraft operation for compensation or hire under part 121 or part 135 of this chapter unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Operating Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(c) Each applicant for a certificate under this part shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or part 135 of this chapter. All proving tests must be conducted in a manner acceptable to the Administrator. All proving tests must be conducted under the appropriate operating and maintenance requirements of part 121 or 135 of this chapter that would apply if the applicant were fully certificated. The Administrator will issue a letter of authorization to each person stating the various authorities under which the proving tests shall be conducted.

§ 119.35 Certificate application.

(a) A person applying to the Administrator for an Air Carrier

Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator; and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

(c) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal operations base of operations.

(d) Each application submitted under paragraph (c) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns 5 percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.

(ii) The name and address of each director and each officer and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein the non-corporate applicant and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(e) In addition, each applicant for the original issue of an operating certificate under paragraph (c) of this section must submit with the application a signed statement showing—

(1) The financial information listed in paragraph (h) of this section; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(f) Each applicant for, or holder of, a certificate issued under paragraph (c) of this section this part, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (d)(1) or (d)(2) of this section; or

(2) A change in the financial information submitted to the Administrator under paragraph (g) of this section that occurs while the application for the issue is pending before the FAA and that would make the applicant's financial situation substantially less favorable than originally reported.

(g) Each applicant for the original issue of an operating certificate under paragraph (c) of this section must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.

(3) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.

(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and nonoperating expenses by expense objective classification; and

(iii) Estimated net profit or loss for the period.

(5) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—

(i) Acquisition of property and equipment (explain);

(ii) Retirement of debt (explain);

(iii) Additional working capital (explain);

(iv) Operating losses other than depreciation and amortization (explain); and

(v) Other (explain).

(6) An estimate of the cash that will be available during the first 6 months after the month in which the certificate is expected to be issued, from—

(i) Sale of property or flight equipment (explain);

(ii) New debt (explain);

(iii) New equity (explain);

(iv) Working capital reduction (explain);

(v) Operations (profits) (explain);

(vi) Depreciation and amortization (explain); and

(vii) Other (explain).

(7) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and period of coverage; and special conditions, exclusions, and limitations.

(8) Any other financial information that the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct his or her operations with the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes—

(a) The certificate holder's name;

(b) The location of the certificate holder's principal base of operations;

(c) The certificate number;

(d) The certificate's effective date; and

(e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

(1) Meets the applicable requirements of this part;

(2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that—

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if—

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

(2) The certificate holder must petition for reconsideration to the Director, Flight Standards Service.

§ 119.43 Certificate holder's duty to maintain operations specifications.

(a) Each certificate holder shall maintain a complete and separate set of its operations specifications at its principal base of operations.

(b) Each certificate holder shall insert pertinent excerpts of its operations specifications, or references thereto, in its manual and shall—

(1) Clearly identify each such excerpt as a part of its operations specifications; and

(2) State that compliance with each operations specifications requirement is mandatory.

(c) Each certificate holder shall keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.

§ 119.45 [Reserved]

§ 119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.

(a) Each certificate holder must maintain a principal base of operations. Each certificate holder may also establish a main operations base and a main maintenance base which may be located at either the same location as the principal base of operations or at separate locations.

(b) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a certificate holder must provide written notification to its certificate-holding district office.

§ 119.49 Contents of operations specifications.

(a) Each certificate holder conducting domestic, flag, or commuter operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial numbers of each aircraft authorized for use, each regular and alternate airport to be used in scheduled operations, and, except for commuter operations, each provisional and refueling airport.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (a)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft or airport not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Airport limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, rotors, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Interline equipment interchange requirements, if relevant.

(11) Aircraft wet lease information required by § 119.53(c).

(12) Any authorized deviation and exemption granted from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3) (i) or (ii).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(c) Each certificate holder conducting on-demand operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Kind and area of operations authorized.

(5) Category and class of aircraft that may be used in those operations.

(6) Type of aircraft, registration markings, and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (c)(6) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(7) Registration markings of each aircraft that is to be inspected under an approved aircraft inspection program under § 135.419 of this chapter.

(8) Time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(9) Additional maintenance items required by the Administrator under § 135.421 of this chapter.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorized deviation or exemption from any requirement of this chapter.

(12) Any other item the Administrator determines is necessary.

§ 119.51 Amending operations specifications.

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator determines that safety in air commerce and the public interest require the amendment; or

(2) The certificate holder applies for the amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment to a certificate holder's operations specifications, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment.

(2) The certificate-holding district office sets a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment;

(ii) The partial adoption of the proposed amendment; or

(iii) The withdrawal of the proposed amendment.

(4) If the certificate-holding district office issues an amendment to the operations specifications, it becomes effective not less than 30 days after the certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety in air commerce; or

(ii) The certificate holder petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases of mergers; acquisitions of airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the certificate-holding district office approves the amendment, following coordination with the

certificate holder regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the amendment of operations specifications, the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial of the amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment to its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the certificate-holding district office unless the certificate-holding district office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends the operations specifications and makes the amendment effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office articulates the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 119.53 Wet leasing of aircraft and other arrangements for transportation by air.

(a) Unless otherwise authorized by the Administrator, prior to conducting operations involving a wet lease, each certificate holder under this part authorized to conduct common carriage operations under this subchapter shall provide the Administrator with a copy of the wet lease to be executed which would lease the aircraft to any other person engaged in common carriage operations under this subchapter, including foreign air carriers, or to any other foreign person engaged in common carriage wholly outside the United States.

(b) No certificate holder under this part may wet lease from a foreign air carrier or any other foreign person or any person not authorized to engage in common carriage.

(c) Upon receiving a copy of a wet lease, the Administrator determines which party to the agreement has operational control of the aircraft and issues amendments to the operations specifications of each party to the agreement, as needed. The lessor must provide the following information to be incorporated into the operations specifications of both parties, as needed.

(1) The names of the parties to the agreement and the duration thereof.

(2) The nationality and registration markings of each aircraft involved in the agreement.

(3) The kind of operation (e.g., domestic, flag, supplemental, commuter, or on-demand).

(4) The airports or areas of operation.

(5) A statement specifying the party deemed to have operational control and the times, airports, or areas under which such operational control is exercised.

(d) In making the determination of paragraph (c) of this section, the Administrator will consider the following:

(1) Crewmembers and training.

(2) Airworthiness and performance of maintenance.

(3) Dispatch.

(4) Servicing the aircraft.

(5) Scheduling.

(6) Any other factor the Administrator considers relevant.

(e) Other arrangements for transportation by air: Except as provided in paragraph (f) of this section, a certificate holder under this part operating under part 121 or 135 of this chapter may not conduct any operation for another certificate holder under this part or a foreign air carrier under part 129 of this chapter or a foreign person engaged in common carriage wholly outside the United States unless it holds applicable Department of Transportation economic authority, if required, and is authorized under its operations specifications to conduct the same kinds of operations (as defined in § 119.3). The certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation. These substitute operations must be conducted between airports for which the substitute certificate holder holds authority for scheduled operations or within areas of operations for which the substitute certificate holder has authority for supplemental or on-demand operations.

(f) A certificate holder under this part may, if authorized by the Department of Transportation under § 380.3 of this title and the Administrator in the case of interstate commuter, interstate domestic, and flag operations, or the Administrator in the case of scheduled intrastate common carriage operations, conduct one or more flights for passengers who are stranded because of the cancellation of their scheduled flights. These flights must be conducted under the rules of part 121 or part 135 of this chapter applicable to supplemental or on-demand operations.

§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

(b) A certificate holder that has a contract with the U.S. Department of Defense's Air Mobility Command (AMC) must submit a request for deviation authority to AMC. AMC will review the requests, then forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review and action.

(c) The Administrator may authorize a deviation to perform operations under a U.S. military contract under the following conditions—

(1) The Department of Defense certifies to the Administrator that the operation is essential to the national defense;

(2) The Department of Defense further certifies that the certificate holder cannot perform the operation without deviation authority;

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to

the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 Emergencies requiring immediate decision and action.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter to the extent required in the interest of safety.

(b) In an emergency situation arising during flight, that requires immediate decision and action by an aircraft dispatcher or appropriate management personnel, and that is known to him, he shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If he cannot communicate with the pilot, he shall declare an emergency and take any reasonable action necessary under the circumstances.

(c) Whenever a pilot in command or a dispatcher or an appropriate management person exercises emergency authority, he shall keep the appropriate ATC facility, ground radio station, and, if applicable, dispatch centers, fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the certificate holder's management to the Administrator within 10 days of the emergency action.

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures of § 119.63 upon resuming that kind of operation; or

(4) The Administrator suspends or revokes the operations specifications for a kind of operation.

(c) Within 30 days after a certificate holder terminates operations under part 135 of this chapter, the operating certificate and operations specifications must be surrendered by the certificate holder to the certificate-holding district office.

§ 119.63 Recency of operation.

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless the certificate holder has conducted that kind of operation within the preceding number of consecutive calendar days specified in this paragraph:

(1) For domestic, flag, or commuter operations—30 days.

(2) For supplemental or on-demand operations—90 days, except that if the certificate holder has authority to conduct domestic, flag, or commuter operations, and has conducted domestic, flag or commuter operations within the previous 30 days, this paragraph does not apply.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the number of preceding 30 consecutive calendar days specified in paragraph (a) of this section, it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days before resumption of that kind of operation; and

(2) It makes itself available and accessible during the 5 consecutive calendar day period in the event that the FAA decides to conduct a full inspection reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the highest degree of safety in its operations. The certificate holder must have qualified personnel serving full-time in the following or equivalent positions:

(1) Director of Safety.

(2) Director of Operations.

(3) Chief Pilot.

(4) Director of Maintenance.

(5) Chief Inspector.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of airplanes used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following materials with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) 14 CFR Chapter I (Federal Aviation Regulations);

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 121 of this chapter); and

(v) The manual required by § 121.133 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must:

(1) State in the general policy provisions of the manual required by § 121.133 of this chapter, the duties, responsibilities, and authority of personnel required under paragraph (a) of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) To serve as Director of Operations under § 119.65(a) a person must—

(1) Hold an airline transport pilot certificate;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large airplanes under part 121 or part 135 of this chapter, or if the certificate holder uses only small airplanes in its operations, the experience may be obtained in large or small airplanes; and

(3) In the case of a person becoming a Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(b) To serve as Chief Pilot under § 119.65(a) a person must hold an airline transport pilot certificate with appropriate ratings for at least one of the airplanes used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(c) To serve as Director of Maintenance under § 119.65(a) a person must—

(1) Hold a mechanic certificate with airframe and powerplant ratings;

(2) Have 1 year of experience in a position responsible for returning airplanes to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (c)(4)(ii) of this section maintaining the same category and class of airplane as the certificate holder uses; and

(4) Have 3 years experience within the past 6 years in one or a combination of the following—

(i) Maintaining large airplanes with 10 or more passenger seats, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of airplane as the certificate holder uses; or

(ii) Repairing airplanes in a certificated airframe repair station that is rated to maintain airplanes in the same category and class of airplane as the certificate holder uses.

(d) To serve as Chief Inspector under § 119.65(a) a person must—

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years of maintenance experience on different types of large airplanes with 10 or more passenger seats with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year in a supervisory capacity maintaining large aircraft with 10 or more passenger seats.

(e) A certificate holder may request a deviation to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with the Federal Aviation Regulations and the procedures outlined in the certificate holder's manual. Grants of deviation under this paragraph

may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the safety of its operations. Except for a certificate holder using only one pilot in its operations, the certificate holder must have qualified personnel serving in the following or equivalent positions:

(1) Director of Operations.

(2) Chief Pilot.

(3) Director of Maintenance.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following material with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) 14 CFR Chapter I (Federal Aviation Regulations);

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 135 of this chapter); and

(v) The manual required by § 135.21 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must—

(1) State in the general policy provisions of the manual required by § 135.21 of this chapter, the duties, responsibilities, and authority of personnel required or approved under paragraph (a) or (b), respectively, of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

(a) To serve as Director of Operations under § 119.69(a) for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Chief Pilot under § 119.69(a) for a certificate holder conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate with appropriate ratings and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(e) To serve as Director of Maintenance under § 119.69(a) a person must hold a mechanic certificate with airframe and powerplant ratings and either:

(1) Have 3 years of experience within the past 3 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 3 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(f) A certificate holder may request a deviation to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the

Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with 14 CFR Chapter I and the procedures outlined in the certificate holder's manual. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

7. The heading for part 121 is revised to read as set forth above.

8. Special Federal Aviation Regulation 38–2 is amended by revising the last paragraph to read as follows:

SFAR 38–2—Certification and Operating Requirements

* * * * *

This Special Federal Aviation Regulation No. 38–2 terminates March 20, 1997.

9. A note for SFAR 50–2 is added after the SFAR No. to read as follows:

SFAR No. 50–2

Note: For the text of SFAR No. 50–2, see part 91 of this chapter.

10. Section 121.1 is revised to read as follows:

§ 121.1 Applicability.

This part prescribes rules governing—

(a) The domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 of 14 CFR part 121, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58 of 14 CFR part 121.

(d) Nonstop sightseeing flights conducted with airplanes having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, except for operations subject to SFAR 50–2 of 14 CFR part 121, these operations, when conducted for compensation or hire, must comply only with §§ 121.455 and 121.457, except that an operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to the operator's principal base of operations to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

11. Section 121.2 is added to read as follows:

§ 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that was issued an air carrier or operating certificate and operations specifications under the requirements of part 135 of this chapter or under SFAR No. 38–2 of 14 CFR part 121 before January 19, 1996, and that conducts scheduled passenger-carrying operations with:

(i) Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats;

(ii) Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats; or

(iii) Turbojet engine powered airplanes having a passenger seat configuration of 1–30 seats.

(2) Each person who, after January 19, 1996, applies for or obtains an initial air carrier or operating certificate and operations specifications to conduct scheduled passenger-carrying operations in the kinds of airplanes described in paragraphs (a)(1)(i), (a)(1)(ii), or paragraph (a)(1)(iii) of this section.

(b) *Obtaining operations specifications.* A certificate holder described in paragraph (a)(1) of this section may not, after March 20, 1997, operate an airplane described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section in scheduled passenger-carrying operations, unless it obtains operations specifications to conduct its scheduled operations under this part on or before March 20, 1997.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), (e), and (i) of this section, each certificate holder described in paragraphs (a)(1) of this section shall comply with each applicable requirement of this part on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. Except as provided in paragraphs (d) and (e) of this section, each person described in paragraph (a)(2) of this section shall comply with each applicable requirement of this part on and after the date on which that person is issued a certificate and operations specifications under this part.

(d) *Delayed compliance dates.* Unless paragraph (e) of this section specifies an earlier compliance date, no certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after a date listed in this paragraph (d) unless that airplane meets the applicable requirement of this paragraph (d):

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seating configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in this paragraph (d)(1):

(i) December 22, 1997:

(A) Section 121.289, Landing gear aural warning.

(B) Section 121.308, Lavatory fire protection.

(C) Section 121.310(e), Emergency exit handle illumination.

(D) Section 121.337(b)(8), Protective breathing equipment.

(E) Section 121.340, Emergency flotation means.

(ii) December 20, 1999: Section 121.342, Pitot heat indication system.

(iii) December 20, 2010:

(A) For airplanes described in § 121.157(f), the Airplane Performance Operating Limitations in §§ 121.189 through 121.197.

(B) Section 121.161(b), Ditching approval.

(C) Section 121.305(j), Third attitude indicator.

(D) Section 121.312(c), Passenger seat cushion flammability.

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraphs (a)(1) (i) and (ii) unless that airplane meets the applicable requirement listed in paragraphs (a)(1) (i) and (ii):

(i) December 22, 1997:

(A) Section 121.308, Lavatory fire protection.

(B) Section 121.337(b) (8) and (9), Protective breathing equipment.

(C) Section 121.340, Emergency flotation means.

(ii) March 20, 1997: Section 121.305(j), Third attitude indicator.

(e) *Newly manufactured airplanes.* No certificate holder that is described in paragraph (a) of this section may operate under this part an airplane manufactured on or after a date listed in this paragraph unless that airplane meets the applicable requirement listed in this paragraph (e).

(1) For nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats:

(i) Manufactured on or after March 20, 1997:

(A) Section 121.305(j), Third attitude indicator.

(B) Section 121.311(f), Safety belts and shoulder harnesses.

(ii) Manufactured on or after December 22, 1997: Section 121.317(a), Fasten seat belt light.

(iii) Manufactured on or after December 20, 1999: Section 121.293, Takeoff warning system.

(2) For transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats manufactured on or after March 20, 1997: Section 121.305(j), Third attitude indicator.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after March 29, 1995, in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before March 19, 1996 each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under this part. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of this part on or before March 20, 1997; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

(h) *Continuing requirements.* Until each certificate holder that is covered by paragraph (a) of this section meets the specific compliance dates listed in paragraphs (d) and (e) of this section, the certificate holder shall comply with the applicable airplane and equipment requirements of part 135 of this chapter.

(i) *Delayed pilot age limitation:*

(1) Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a certificate holder covered by paragraph (a)(1) of this section may use the services of a person as a pilot after that person has reached his or her 60th birthday, until December 20, 1999. Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a person may serve as a pilot for a certificate holder covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999.

(2) This paragraph (i)(1) applies only to persons who were employed as pilots by a certificate holder covered by paragraph (a)(1) of this section on or before March 20, 1997.

§§ 121.3, 121.5, 121.7, 121.9, and 121.13 [Removed]

12. Sections 121.3, 121.5, 121.7, 121.9, and 121.13 are removed.

§ 121.4 [Amended]

13. Section 121.4 is amended by removing ''§ 121.3'' wherever it appears and adding in its place ''part 119 of this chapter''.

14. Section 121.15 is revised to read as follows:

§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If a certificate holder operating under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

Subpart B—[Removed and Reserved]

15. Subpart B (§§ 121.21 through 121.29) is removed, and the subpart heading is reserved.

Subpart C—[Removed and Reserved]

16. Subpart C (§§ 121.41 through 121.61) is removed and the subpart heading is reserved.

Subpart D—[Removed and Reserved]

17. Subpart D (§§ 121.71 through 121.83) is removed and the subpart heading is reserved.

18. Section 121.133 is revised to read as follows:

§ 121.133 Preparation.

(a) Each certificate holder shall prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting its operations.

(b) For the purpose of this subpart, the certificate holder may prepare that part of the manual containing maintenance information and instructions, in whole or in part, in printed form or other form acceptable to the Administrator.

19. Section 121.135 is amended by revising paragraphs (a)(4); (b)(2); (b)(6); (b)(7); (b)(8)(i), (ii), and (iii); (b)(23) introductory text and (c) to read as follows:

§ 121.135 Contents.

(a) * * *

(4) Not be contrary to any applicable Federal regulation and, in the case of a flag or supplemental operation, any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate.

* * * * *

(b) * * *

(2) Duties and responsibilities of each crewmember, appropriate members of the ground organization, and management personnel.

* * * * *

(6) For domestic or flag operations, appropriate information from the en route operations specifications, including for each approved route the types of airplanes authorized, the type of operation such as VFR, IFR, day,

night, etc., and any other pertinent information.

(7) For supplemental operations, appropriate information from the operations specifications, including the area of operations authorized, the types of airplanes authorized, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(8) * * *

(i) Its location (domestic and flag operations only);

(ii) Its designation (regular, alternate, provisional, etc.) (domestic and flag operations only);

(iii) The types of airplanes authorized (domestic and flag operations only);

* * * * *

(23) Procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

* * * * *

(c) Each certificate holder shall maintain at least one complete copy of the manual at its principal base of operations.

20. Section 121.141 is revised amended by revising the section heading, paragraph (a), and the introductory text of paragraph (b) to read as follows:

§ 121.141 Airplane flight manual.

(a) Each certificate holder shall keep a current approved airplane flight manual for each type of airplane that it operates except for nontransport category airplanes certificated before January 1, 1965.

(b) In each airplane required to have an airplane flight manual in paragraph (a) of this section, the certificate holder shall carry either the manual required by § 121.133, if it contains the information required for the applicable flight manual and this information is clearly identified as flight manual requirements, or an approved Airplane Manual. If the certificate holder elects to carry the manual required by § 121.133, the certificate holder may revise the operating procedures sections and modify the presentation of performance data from the applicable flight manual if the revised operating procedures and modified performance date presentation are—

(1) Approved by the Administrator; and

(2) Clearly identified as airplane flight manual requirements.

* * * * *

21. Section 121.157 is amended by revising paragraphs (b) and (e) and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

* * * * *

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c), (d), (e), and (f) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173(a), (b), (d), and (e).

* * * * *

(e) *Commuter category airplanes.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, and before March 30, 1995, unless it meets the applicable requirements of § 121.173(a), (b), (d), (e), and (f) and was type certificated in the commuter category.

(f) *Other nontransport category airplanes.* Except as provided in paragraphs (c), (d), and (e) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless it meets the applicable requirements of § 121.173(a), (b), (d), and (e), was manufactured before March 20, 1997, and meets one of the following:

(1) Until December 20, 2010:

(i) The airplane was type certificated in the normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

(ii) The airplane was type certificated in the normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23, 14 CFR part 23.

(iii) The airplane was type certificated in the normal category and meets the additional airworthiness standards in appendix A of part 135 of this chapter.

(iv) The airplane was type certificated in the normal category and complies with either section 1.(a) or 1.(b) of SFAR No. 41 of 14 CFR part 21.

(2) The airplane was type certificated in the normal category, meets the additional requirements described in paragraphs (f)(1)(i) through (f)(1)(iv) of this section, and meets the performance requirements in appendix K of this part.

(g) *Certain newly manufactured airplanes.* No certificate holder may operate an airplane under this part that was type certificated as described in paragraphs (f)(1)(i) through (f)(1)(iv) of this section and that was manufactured after March 20, 1997, unless it meets the performance requirements in appendix K of this part.

(h) *Newly type certificated airplanes.* No person may operate under this part an airplane for which the application for a type certificate is submitted after March 29, 1995, unless the airplane is type certificated under part 25 of this chapter.

22. Section 121.159 is revised to read as follows:

§ 121.159 Single-engine airplanes prohibited.

No certificate holder may operate a single-engine airplane under this part.

23. Section 121.161 is amended by revising paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 121.161 Airplane limitations: Type of route.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder may operate a land airplane (other than a DC–3, C–46, CV–240, CV–340, CV–440, CV–580, CV–600, CV–640, or Martin 404) in an extended overwater operation unless it is certificated or approved as adequate for ditching under the ditching provisions of part 25 of this chapter.

(c) Until December 20, 2010, a certificate holder may operate, in an extended overwater operation, a nontransport category land airplane type certificated after December 31, 1964, that was not certificated or approved as adequate for ditching under the ditching provisions of part 25 of this chapter.

24. Section 121.163 is amended by revising paragraphs (a), (b), and (c) and the introductory text of paragraph (d) to read as follows:

§ 121.163 Airplane proving tests.

(a) *Initial airplane proving tests.* No person may operate an airplane not before proven for use in a kind of operation under this part or part 135 of this chapter unless an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests acceptable to the Administrator, including a representative number of flights into en route airports. The requirement for at least 100 hours of proving tests may be reduced by the Administrator if the Administrator determines that a satisfactory level of proficiency has been demonstrated to justify the reduction. At least 10 hours of proving flights must

be flown at night; these tests are irreducible.

(b) *Proving tests for kinds of operations.* Unless otherwise authorized by the Administrator, for each type of airplane, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct, including a representative number of flights into en route airports.

(c) *Proving tests for materially altered airplanes.* Unless otherwise authorized by the Administrator, for each type of airplane that is materially altered in design, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct with that airplane, including a representative number of flights into en route airports.

(d) *Definition of materially altered.* For the purposes of paragraph (c) of this section, a type of airplane is considered to be materially altered in design if the alteration includes—

* * * * *

Subpart I—[Amended]

25. Subpart I is amended by removing the words ''transport category'' wherever they appear.

26. Paragraphs (a), (b), (c), and (e) of § 121.173 are revised to read as follows:

§ 121.173 General.

(a) Except as provided in paragraph (c) of this section, each certificate holder operating a reciprocating-engine-powered airplane shall comply with §§ 121.175 through 121.187.

(b) Except as provided in paragraph (c) of this section, each certificate holder operating a turbine-engine-powered airplane shall comply with the applicable provisions of §§ 121.189 through 121.197, except that when it operates—

(1) A turbo-propeller-powered airplane type certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, the certificate holder may comply with §§ 121.175 through 121.187; or

(2) Until December 20, 2010, a turbo-propeller-powered airplane described in § 121.157(f), the certificate holder may comply with the applicable performance requirements of appendix K of this part.

(c) Each certificate holder operating a large nontransport category airplane type certificated before January 1, 1965, shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

* * * * *

(e) Except as provided in paragraph (c) of this section, no person may take off a reciprocating-engine-powered airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of 14 CFR part 121, subpart I) after taking into account the temperature operating correction factors in the applicable Airplane Flight Manual.

* * * * *

27. Section 121.175 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

§ 121.175 Airplanes: Reciprocating-engine-powered: Weight limitations.

* * * * *

(f) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

28. Section 121.177 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.177 Airplanes: Reciprocating-engine-powered: Takeoff limitations.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

29. Section 121.179 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.179 Airplanes: Reciprocating-engine-powered: En route limitations: all engines operating.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

30. Section 121.181 is amended by revising the section heading; by revising the formulas in paragraphs (a) and (c)(1) to read ''$(0.079–0.106/N)\ V_{so}^2$'' and revising ''$0.026\ V_{so2}$'' in paragraphs (a) and (c)(1) to read ''$0.026\ V_{so}^2$''; and adding a new paragraph (d) to read as follows:

§ 121.181 Airplanes: Reciprocating-engine-powered: En route limitations: One engine inoperative.

* * * * *

(d) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

§ 121.183 [Amended]

31. Section 121.183 is amended by revising ''$0.0013\ V_{so2}$'' in paragraphs (a)(2) and (b)(3) to read ''$0.013\ V_{so}^2$''.

32. Section 121.185 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.185 Airplanes: Reciprocating-engine-powered: Landing limitations: Destination airport.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

33. Section 121.187 is amended by revising the section heading, designating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 121.187 Airplanes: Reciprocating-engine-powered: Landing limitations: Alternate airport.

* * * * *

(b) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

34. Section 121.211 is revised to read as follows:

§ 121.211 Applicability.

(a) This subpart prescribes special airworthiness requirements applicable to certificate holders as stated in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraph (d) of this section, each airplane type certificated under Aero Bulletin 7A or part 04 of the Civil Air Regulations in effect before November 1, 1946 must meet the special airworthiness requirements in §§ 121.215 through 121.283.

(c) Each certificate holder must comply with the requirements of §§ 121.285 through 121.291.

(d) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (b) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance only with those requirements that are necessary to accomplish the basic objectives of this part.

(e) No person may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless the airplane meets the special airworthiness requirements in § 121.293.

§ 121.213 [Reserved]

35. Section 121.213 is removed and reserved.

36. Section 121.285 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 121.285 Carriage of cargo in passenger cargo compartments.

(a) Except as provided in paragraph (b), (c), or (d) or this section, no

certificate holder may carry cargo in the passenger compartment of an airplane.

* * * * *

(d) Cargo, including carry-on baggage, may be carried anywhere in the passenger compartment of a nontransport category airplane type certificated after December 31, 1964, if it is carried in an approved cargo rack, bin, or compartment installed in or on the airplane, if it is secured by an approved means, or if it is carried in accordance with each of the following:

(1) For cargo, it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence.

(2) It is packaged or covered to avoid possible injury to occupants.

(3) It does not impose any load on seats or in the floor structure that exceeds the load limitation for those components.

(4) It is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or is located in a position that obscures any passenger's view of the ''seat belt'' sign, ''no smoking'' sign or placard, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passengers is provided.

(5) It is not carried directly above seated occupants.

(6) It is stowed in compliance with this section for takeoff and landing.

(7) For cargo-only operations, paragraph (d)(4) of this section does not apply if the cargo is loaded so that at least one emergency or regular exit is available to provide all occupants of the airplane a means of unobstructed exit from the airplane if an emergency occurs.

§ 121.289 [Amended]

37. Section 121.289(a) introductory text is amended by removing the word ''large.''

38. Section 121.291 is amended by revising the introductory text of paragraph (b) and the introductory text of paragraph (c); revising paragraph (c)(2) and (c)(4); and by adding a new sentence at the end of paragraph (d) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(b) Each certificate holder conducting operations with airplanes with a seating capacity of more than 44 passengers must conduct a partial demonstration of emergency evacuation procedures in accordance with paragraph (c) of this section upon:

* * * * *

(c) In conducting the partial demonstration required by paragraph (b) of this section, each certificate holder must:

* * * * *

(2) Apply for and obtain approval from the certificate-holding district office before conducting the demonstration;

* * * * *

(4) Apply for and obtain approval from the certificate-holding district office before commencing operations with this type and model airplane.

(d) * * * For certificate holders subject to § 121.2(a)(1), this paragraph applies only when a new type or model airplane is introduced into the certificate holder's operations after January 19, 1996.

* * * * *

39. A new § 121.293 is added to read as follows:

121.293 Special airworthiness requirements for nontransport category airplanes type certificated after December 31, 1964.

No certificate holder may operate a nontransport category airplane manufactured after December 20, 1999 unless the airplane contains a takeoff warning system that meets the requirements of 14 CFR 25.703. However, the takeoff warning system does not have to cover any device for which it has been demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition.

40. Section 121.305 is amended by revising paragraph (j) and adding a new paragraph (k) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) On the airplanes described in this paragraph, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument that complies with the provisions of paragraph (k) of this section:

(1) On each turbojet powered airplane.

(2) On each turbopropeller powered airplane that is manufactured after March 20, 1997.

(3) After December 20, 2010, on each turbopropeller powered airplane having a passenger seat configuration of 10–30 seats, that was manufactured before March 20, 1997.

(k) When required by paragraph (j) of this section, a third gyroscopic bank-and-pitch indicator (artificial horizon) that:

(1) Is powered from a source independent of the electrical generating system;

(2) Continues reliable operation for a minimum of 30 minutes after total failure of the electrical generating system;

(3) Operates independently of any other attitude indicating system;

(4) Is operative without selection after total failure of the electrical generating system;

(5) Is located on the instrument panel in a position acceptable to the Administrator that will make it plainly visible to and usable by each pilot at his or her station; and

(6) Is appropriately lighted during all phases of operation.

41. Section 121.308 is revised to read as follows:

§ 121.308 Lavatory fire protection.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may operate a passenger-carrying airplane unless each lavatory in the airplane is equipped with a smoke detector system or equivalent that provides a warning light in the cockpit or provides a warning light or audio warning in the passenger cabin which would be readily detected by a flight attendant, taking into consideration the positioning of flight attendants throughout the passenger compartment during various phases of flight.

(b) Except as provided in paragraph (c) of this section, no person may operate a passenger-carrying airplane unless each lavatory in the airplane is equipped with a built-in fire extinguisher for each disposal receptacle for towels, paper, or waste located within the lavatory. The built-in fire extinguisher must be designed to discharge automatically into each disposal receptacle upon occurrence of a fire in the receptacle.

(c) Until December 22, 1997, a certificate holder described in § 121.2(a)(1) or (2) may operate an airplane with a passenger seat configuration of 30 or fewer seats that does not comply with the smoke detector system requirements described in paragraph (a) of this section and the fire extinguisher requirements described in paragraph (b) of this section.

(d) After December 22, 1997, no person may operate a nontransport category airplane type certificated after December 31, 1964, with a passenger

seat configuration of 10–19 seats unless that airplane complies with the smoke detector system requirements described in paragraph (a) of this section, except that the smoke detector system or equivalent must provide a warning light in the cockpit or an audio warning that would be readily detected by the flightcrew.

42. Section 121.309 is amended by revising paragraphs (c)(7), (d)(1), and (e) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) * * *

(7) At least two of the required hand fire extinguisher installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent. At least one hand fire extinguisher in the passenger compartment must contain Halon 1211 or equivalent.

* * * * *

(d) *First aid and emergency medical equipment and protective gloves.* (1) For treatment of injuries or medical emergencies that might occur during flight time or in minor accidents each passenger-carrying airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(i) Approved first aid kits; and

(ii) In airplanes for which a flight attendant is required, an emergency medical kit.

* * * * *

(e) *Crash ax.* Except for nontransport category airplanes type certificated after December 31, 1964, each airplane must be equipped with a crash ax.

* * * * *

43. Section 121.310 is amended by revising paragraphs (d)(1), (2), (3), and (4) and (l) and revising the introductory text of paragraphs (c), (f), (h)(1) and (k) to read as follows:

121.310 Additional emergency equipment.

* * * * *

(c) *Lighting for interior emergency exit markings.* Except for nontransport category airplanes type certificated after December 31, 1964, each passenger-carrying airplane must have an emergency lighting system, independent of the main lighting system. However, sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

The emergency lighting system must—

* * * * *

(d) * * *

(1) Each light must—

(i) Be operable manually both from the flightcrew station and, for airplanes on which a flight attendant is required, from a point in the passenger compartment that is readily accessible to a normal flight attendant seat;

(ii) Have a means to prevent inadvertent operation of the manual controls; and

(iii) When armed or turned on at either station, remain lighted or become lighted upon interruption of the airplane's normal electric power.

(2) Each light must be armed or turned on during taxiing, takeoff, and landing. In showing compliance with this paragraph a transverse vertical separation of the fuselage need not be considered.

(3) Each light must provide the required level of illumination for at least 10 minutes at the critical ambient conditions after emergency landing.

(4) Each light must have a cockpit control device that has an ''on,'' ''off,'' and ''armed'' position.

* * * * *

(f) *Emergency exit access.* Access to emergency exits must be provided as follows for each passenger-carrying transport category airplane:

* * * * *

(h) * * *

(1) Except for nontransport category airplanes certificated after December 31, 1964, each passenger-carrying airplane must be equipped with exterior lighting that meets the following requirements:

* * * * *

(k) On each large passenger-carrying turbojet-powered airplane, each ventral exit and tailcone exit must be—

* * * * *

(l) *Portable lights.* No person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

* * * * *

44. Section 121.311 is amended by revising the first sentence of the introductory text of paragraph (e), by adding a new paragraph (e)(3), by revising the introductory text of paragraph (f), and by revising paragraph (h) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(e) Except as provided in paragraphs (e)(1) through (e)(3) of this section, no certificate holder may take off or land an airplane unless each passenger seat back is in the upright position. * **

* * * * *

(3) On airplanes with no flight attendant, the certificate holder may take off or land as long as the flightcrew instructs each passenger to place his or her seat back in the upright position for takeoff and landing.

(f) No person may operate a transport category airplane that was type certificated after January 1, 1958, or a nontransport category airplane manufactured after March 20, 1997, unless it is equipped at each flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, effective March 6, 1980, except that—

* * * * *

(h) Each occupant of a seat equipped with a shoulder harness or with a combined safety belt and shoulder harness must have the shoulder harness or combined safety belt and shoulder harness properly secured about that occupant during takeoff and landing, except that a shoulder harness that is not combined with a safety belt may be unfastened if the occupant cannot perform the required duties with the shoulder harness fastened.

* * * * *

45. Section 121.312 is revised to read as follows:

§ 121.312 Materials for compartment interiors.

(a) *All interior materials; transport category airplanes and nontransport category airplanes type certificated before January 1, 1965.* Except for the materials covered by paragraph (b) of this section, all materials in each compartment of a transport category airplane, or a nontransport category airplane type certificated before January 1, 1965, used by the crewmembers and passengers, must meet the requirements of § 25.853 of this chapter in effect as follows, or later amendment thereto:

(1) *Airplane with passenger seating capacity of 20 or more.*

(i) *Manufactured after August 19, 1988, but prior to August 20, 1990.* Except as provided in paragraph (a)(3)(ii) of this section, each airplane with a passenger capacity of 20 or more and manufactured after August 19, 1988, but prior to August 20, 1990, must comply with the heat release rate testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on August 20, 1986) (see App. L of this part), except that the total heat release over the first 2 minutes of sample exposure must not exceed 100 kilowatt minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(ii) *Manufactured after August 19, 1990.* Each airplane with a passenger capacity of 20 or more and manufactured after August 19, 1990, must comply with the heat release rate and smoke testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1)(see app. L of this part) in effect on September 26, 1988).

(2) *Substantially complete replacement of the cabin interior on or after May 1, 1972.*—(i) *Airplane for which the application for type certificate was filed prior to May 1, 1972.* Except as provided in paragraph (a)(3)(i) or (a)(3)(ii) of this section, each airplane for which the application for type certificate was filed prior to May 1, 1972, must comply with the provisions of § 25.853 in effect on April 30, 1972, regardless of passenger capacity, if there is a substantially complete replacement of the cabin interior after April 30, 1972.

(ii) *Airplane for which the application for type certificate was filed on or after May 1, 1972.* Except as provided in paragraph (a)(3)(i) or (a)(3)(ii) of this section, each airplane for which the application for type certificate was filed on or after May 1, 1972, must comply with the material requirements under which the airplane was type certificated, regardless of passenger capacity, if there is a substantially complete replacement of the cabin interior on or after that date.

(3) *Airplane type certificated after January 1, 1958, with passenger capacity of 20 or more.*—(i) *Substantially complete replacement of the cabin interior on or after March 6, 1995.* Except as provided in paragraph (a)(3)(ii) of this section, each airplane that was type certificated after January 1, 1958, and has a passenger capacity of 20 or more, must comply with the heat release rate testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on August 20, 1986)(see app. L of this part), if there is a substantially complete replacement of the cabin interior components identified in § 25.853(d), on or after that date, except that the total heat release over the first 2 minutes of sample exposure shall not exceed 100 kilowatt-minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(ii) *Substantially complete replacement of the cabin interior on or after August 20, 1990.* Each airplane that was type certificated after January 1, 1958, and has a passenger capacity of 20 or more, must comply with the heat release rate and smoke testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on September 26, 1988)(see app. L of this part), if there is a substantially complete replacement of the cabin interior components identified in § 25.853(d), on or after August 20, 1990.

(4) Contrary provisions of this section notwithstanding, the Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, may authorize deviation from the requirements of paragraph (a)(1)(i), (a)(1)(ii), (a)(3)(i), or (a)(3)(ii) of this section for specific components of the cabin interior that do not meet applicable flammability and smoke emission requirements, if the determination is made that special circumstances exist that make compliance impractical. Such grants of deviation will be limited to those airplanes manufactured within 1 year after the applicable date specified in this section and those airplanes in which the interior is replaced within 1 year of that date. A request for such grant of deviation must include a thorough and accurate analysis of each component subject to § 25.853(a–1), the steps being taken to achieve compliance, and, for the few components for which timely compliance will not be achieved, credible reasons for such noncompliance.

(5) Contrary provisions of this section notwithstanding, galley carts and galley standard containers that do not meet the flammability and smoke emission requirements of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1)) (see app. L of this part) may be used in airplanes that must meet the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(i), or (a)(3)(ii) of this section, provided the galley carts or standard containers were manufactured prior to March 6, 1995.

(b) *Seat cushions.* Seat cushions, except those on flight crewmember seats, in each compartment occupied by crew or passengers, must comply with the requirements pertaining to seat cushions in § 25.853(c) effective on November 26, 1984, on each airplane as follows:

(1) Each transport category airplane type certificated after January 1, 1958; and

(2) On or after December 20, 2010, each nontransport category airplane type certificated after December 31, 1964.

(c) *All interior materials; airplanes type certificated in accordance with SFAR No. 41 of 14 CFR part 21.* No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 of 14 CFR part 21 for a maximum certificated takeoff weight in excess of 12,500 pounds unless the airplane meets the compartment interior requirements set forth in § 25.853(a) in effect March 6, 1995 (formerly § 25.853(a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978)(see app. L of this part).

(d) *All interior materials; other airplanes.* For each material or seat cushion to which a requirement in paragraphs (a), (b), or (c) of this section does not apply, the material and seat cushion in each compartment used by the crewmembers and passengers must meet the applicable requirement under which the airplane was type certificated.

46. Section 121.313(f) is revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph.

* * * * *

47. Section 121.317 is amended by revising paragraphs (a), (b), and (k) and by adding a new paragraph (l) to read as follows:

§ 121.317 Passenger information.

(a) Except as provided in paragraph (l) of this section, no person may operate an airplane unless it is equipped with passenger information signs that meet the requirements of § 25.791 of this chapter. Except as provided in paragraph (l) of this section, the signs must be constructed so that the crewmembers can turn them on and off.

(b) Except as provided in paragraph (l) of this section, the ''Fasten Seat Belt'' sign shall be turned on during any movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command.

* * * * *

(k) Each passenger shall comply with instructions given him or her by a crewmember regarding compliance with paragraphs (f), (g), (h), and (l) of this section.

(l) A certificate holder may operate a nontransport category airplane type certificated after December 31, 1964, that is manufactured before December 22, 1997, if it is equipped with at least one placard that is legible to each person seated in the cabin that states ''Fasten Seat Belt,'' and if, during any

movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command, a crewmember orally instructs the passengers to fasten their seat belts.

48. Section 121.323(b) and (c) are revised to read as follows:

§ 121.323 Instruments and equipment for operations at night.

* * * * *

(b) An anti-collision light.

(c) Two landing lights, except that only one landing light is required for nontransport category airplanes type certificated after December 31, 1964.

* * * * *

49. Section 121.337 is amended by removing the words ''a transport category'' from the introductory text in paragraph (b) and adding in its place ''an'', by adding a heading for paragraph (b)(8), by adding a heading and revising the introductory text of paragraph (b)(9), and by removing paragraph (d) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(8) *Smoke and fume protection.* * * *

(9) *Fire combatting.* Except for nontransport category airplanes type certificated after December 31, 1964, protective breathing equipment with a portable breathing gas supply meeting the requirements of this section must be easily accessible and conveniently located for immediate use by crewmembers in combatting fires as follows:

* * * * *

50. Section 121.340 is amended by revising paragraph (a) to read as follows:

§ 121.340 Emergency flotation means.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(1) or with an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

* * * * *

51. Section 121.341 is amended by revising paragraph (a) and by adding new paragraphs (c) and (d) to read as follows:

§ 121.341 Equipment for operations in icing conditions.

(a) Except as permitted in paragraph (c)(2) of this section, unless an airplane is type certificated under the transport category airworthiness requirements relating to ice protection, or unless an airplane is a non-transport category airplane type certificated after December 31, 1964, that has the ice protection provisions that meet section 34 of appendix A of part 135 of this chapter, no person may operate an airplane in icing conditions unless it is equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

* * * * *

(c) *Non-transport category airplanes type certificated after December 31, 1964.* Except for an airplane that has ice protection provisions that meet section 34 of appendix A of part 135 of this chapter, or those for transport category airplane type certification, no person may operate—

(1) Under IFR into known or forecast light or moderate icing conditions;

(2) Under VFR into known light or moderate icing conditions; unless the airplane has functioning deicing anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system; or

(3) Into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing condition that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraph (c) of this section based on forecast conditions do not apply.

52. Section 121.342 is revised to read as follows:

§ 121.342 Pitot heat indication systems.

No person may operate a transport category airplane or, after December 20, 1999, a nontransport category airplane type certificated after December 31, 1964, that is equipped with a flight instrument pitot heating system unless the airplane is also equipped with an operable pitot heat indication system that complies § 25.1326 of this chapter in effect on April 12, 1978.

53. Section 121.344 is added to read as follows:

§ 121.344 Flight recorders: Airplanes with a passenger seat configuration of 10–30 passenger seats and a payload capacity of 7,500 pounds or less.

No person may operate an airplane with a passenger seat configuration of 10–30 passenger seats, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less unless it meets the requirements for flight recorders in § 135.152 of this chapter. A person operating an airplane with a passenger seat configuration of more than 30 passenger seats, or a payload capacity of more than 7,500 pounds shall comply with § 121.343.

54. Section 121.349 is amended by adding a new paragraph (e) to read as follows:

§ 121.349 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.

* * * * *

(e) No person may operate an airplane having a passenger seat configuration of 10 to 30 seats, excluding each crewmember seat, and a payload of 7,500 pounds or less under IFR or in extended overwater operations unless it has, in addition to any other required radio communications and navigational equipment appropriate to the facilities to be used which are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility, two microphones, and two headsets or one headset and one speaker.

55. Section 121.353 is amended by revising the heading and the introductory text to read as follows:

§ 121.353 Emergency equipment for operations over uninhabited terrain areas: Flag, supplemental, and certain domestic operations.

Unless the airplane has the following equipment, no person may conduct a flag or supplemental operation or a domestic operation within the States of Alaska or Hawaii over an uninhabited area or any other area that (in its operations specifications) the Administrator specifies required equipment for search and rescue in case of an emergency:

* * * * *

56. Section 121.356 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

* * * * *

(c) The appropriate manuals required by § 121.131 shall contain the following information on the TCAS II System or TCAS I System, as appropriate, as required by this section:

* * * * *

57. Section 121.357 is amended by revising paragraph (a) and introductory text of paragraph (c) and by removing the words ''an air carrier or commercial operator'' in paragraph (c)(1) and

adding, in their place, the words ''a certificate holder,'' to read as follows:

§ 121.357 Airborne weather radar equipment requirements.

(a) No person may operate any transport category airplane (except C–46 type airplanes) or a nontransport category airplane certificated after December 31, 1964, unless approved airborne weather radar equipment has been installed in the airplane.

* * * * *

(c) Each person operating an airplane required to have approved airborne weather radar equipment installed shall, when using it under this part, operate it in accordance with the following:

* * * * *

58. Section 121.359 is amended by removing and reserving paragraph (b), by revising the introductory text of paragraph (c), by redesignating paragraphs (d) through (f) as paragraphs (f) through (h), respectively, and adding new paragraphs (d) and (e) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(c) The cockpit voice recorder required by paragraph (a) of this section must meet the following application standards:

* * * * *

(d) No person may operate a multiengine, turbine-powered airplane having a passenger seat configuration of 10–19 seats unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(e) No person may operate a multiengine, turbine-powered airplane having a passenger seat configuration of 20 to 30 seats unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with § 23.1457 or § 25.1457 of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

* * * * *

59. Section 121.360 is revised to read as follows:

§ 121.360 Ground proximity warning-glide slope deviation alerting system.

(a) No person may operate a turbine-powered airplane unless it is equipped with a ground proximity warning system that meets the performance and environmental standards of TSO–C92 (available from the FAA, 800 Independence Avenue SW., Washington, DC 20591) or incorporates TSO-approved ground proximity warning equipment.

(b) For the ground proximity warning system required by this section, the Airplane Flight Manual shall contain—

(1) Appropriate procedures for—

(i) The use of the equipment;

(ii) Proper flightcrew action with respect to the equipment;

(iii) Deactivation for planned abnormal and emergency conditions;

(iv) Inhibition of Mode 4 warnings based on flaps being in other than the landing configuration if the system incorporates a Mode 4 flap warning inhibition control; and

(2) An outline of all input sources that must be operating.

(c) No person may deactivate a ground proximity warning system required by this section except in accordance with the procedures contained in the Airplane Flight Manual.

(d) Whenever a ground proximity warning system required by this section is deactivated, an entry shall be made in the airplane maintenance record that includes the date and time of deactivation.

(e) No person may operate a turbine-powered airplane unless it is equipped with a ground proximity warning/glide slope deviation alerting system that meets the performance and environmental standards contained in TSO–C92a or TSO–C92b or incorporates TSO-approved ground proximity warning-glide slope deviation alerting equipment.

(f) No person may operate a turbojet powered airplane equipped with a system required by paragraph (e) of this section, that incorporates equipment that meets the performance and environmental standards of TSO–C92b or is approved under that TSO, using other than Warning Envelopes 1 or 3 for Warning Modes 1 and 4.

60. Section 121.380 is amended by redesignating paragraphs (a)(2)(iii) through (a)(2)(vi) as paragraphs (a)(2)(iv) through (a)(2)(vii), respectively; by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), newly redesignated paragraphs (a)(2)(vi), (a)(2)(vii), (c)(1), and (c)(2); and by adding new paragraphs (a)(2)(iii) and (b) to read as follows:

§ 121.380 Maintenance recording requirements.

(a) Each certificate holder shall keep (using the system specified in the manual required in § 121.369) the following records for the periods specified in paragraph (c) of this section:

* * * * *

(2) * * *

(i) The total time in service of the airframe.

(ii) Except as provided in paragraph (b) of this section, the total time in service of each engine and propeller.

(iii) The current status of life-limited parts of each airframe, engine, propeller, and appliance.

* * * * *

(vi) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vii) A list of current major alterations to each airframe, engine, propeller, and appliance.

(b) A certificate holder need not record the total time in service of an engine or propeller on a transport category airplane that has a passenger seat configuration of more than 30 seats or a nontransport category airplane type certificated before January 1, 1958, until the following, whichever occurs first:

(1) March 20, 1997; or

(2) The date of the first overhaul of the engine or propeller, as applicable, after January 19, 1996.

(c) * * *

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, and appliance, the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

* * * * *

61. Section 121.391 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; by revising paragraphs (a) introductory text and (a)(1); by adding a new paragraph (a)(2); and by removing paragraph (e) to read as follows:

§ 121.391 Flight attendants.

(a) Each certificate holder shall provide at least the following flight

attendants on each passenger-carrying airplane used:

(1) For airplanes having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

* * * * *

62. Section 121.393 is added to read as follows:

§ 121.393 Crewmember requirements at stops where passengers remain on board.

At stops where passengers remain on board, the certificate holder must meet the following requirements:

(a) On each airplane for which a flight attendant is not required by § 121.391(a), the certificate holder must ensure that a person who is qualified in the emergency evacuation procedures for the airplane, as required in § 121.417, and who is identified to the passengers, remains:

(1) On board the airplane; or

(2) Nearby the airplane, in a position to adequately monitor passenger safety, and:

(i) The airplane engines are shut down; and

(ii) At least one floor level exit remains open to provide for the deplaning of passengers.

(b) On each airplane for which flight attendants are required by § 121.391(a), but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder shall ensure that:

(i) The airplane engines are shut down;

(ii) At least one floor level exit remains open to provide for the deplaning of passengers; and

(iii) the number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(2) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(3) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

§ 121.435 [Removed]

63. Section 121.435 is removed.

§ 121.455 [Amended]

64. Section 121.455 is amended by adding the words ''or operator'' after the words ''certificate holder,'' wherever they appear.

§ 121.457 [Amended]

65. Section 121.457 is amended by adding the words ''or operator'' after the words ''certificate holder,'' wherever they appear.

66. Section 121.463 is amended in paragraphs (a), (b), and (d) by removing the words ''domestic or flag air carrier'' and adding, in their place, the words ''certificate holder conducting domestic or flag operations;'' in paragraph (d) by removing the words ''air carrier'' and adding, in their place, the words ''certificate holder;'' and by revising paragraphs (a)(2) and (c) to read as follows:

§ 121.463 Aircraft dispatcher qualifications.

(a) * * *

(2) Operating familiarization consisting of at least 5 hours observing operations under this part from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. A person may serve as an aircraft dispatcher without meeting the requirement of this paragraph (a) for 90 days after initial introduction of the airplane into operations under this part.

* * * * *

(c) No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as an aircraft dispatcher unless within the preceding 12 calendar months the aircraft dispatcher has satisfactorily completed operating familiarization consisting of at least 5 hours observing operations under this part, in one of the types of airplanes in each group to be dispatched. This observation shall be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. The requirement of paragraph (a) of this section may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. The requirement of this paragraph may be satisfied by observation of 5 hours of simulator training for each airplane group in one of the simulators approved under § 121.407 for the group. However, if the requirement of paragraph (a) is met by the use of a simulator, no reduction in hours is permitted.

* * * * *

67. Section 121.470 is revised to read as follows:

§ 121.470 Applicability.

This subpart prescribes flight time limitations and rest requirements for domestic operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) Certificate holders conducting scheduled operations entirely within the States of Alaska or Hawaii with airplanes having a passenger seat configuration of more than 30 seats, excluding each crewmember seat, or a payload capacity of more than 7,500 pounds, may comply with the requirements of subpart R of this part for those operations.

68. Section 121.480 is revised to read as follows:

§ 121.480 Applicability.

This subpart prescribes flight time limitations and rest requirements for flag operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

69. Section 121.500 is revised to read as follows:

§ 121.500 Applicability.

This subpart prescribes flight time limitations and rest requirements for supplemental operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

70. Section 121.571 is amended in paragraph (a)(4) by removing the words ''flight attendant'' and adding in their place, the word ''crewmembers;'' by adding a new paragraph (a)(1)(v); and by revising the introductory text of paragraph (a)(3) to read as follows:

§ 121.571 Briefing passengers before take-off.

(a) * * *

(1) * * *

(v) On operations that do not use a flight attendant, the following additional information:

(A) The placement of seat backs in an upright position before takeoff and landing.

(B) Location of survival equipment.

(C) If the flight involves operations above 12,000 MSL, the normal and emergency use of oxygen.

(D) Location and operation of fire extinguisher.

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, before each takeoff a required crewmember assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the required crewmember shall—

* * * * *

71. Section 121.578(b) introductory text is revised to read as follows:

§ 121.578 Cabin ozone concentration.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may operate an airplane above the following flight levels unless it is successfully demonstrated to the Administrator that the concentration of ozone inside the cabin will not exceed—

* * * * *

72. Section 121.581 is amended by revising the section heading and paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 121.581 Observer's seat: En route inspections.

(a) Except as provided in paragraph (c) of this section, each certificate holder shall make available a seat on the flight deck of each airplane, used by it in air commerce, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

* * * * *

(c) For any airplane type certificated before December 20, 1995 for not more than 30 passengers that does not have an observer seat on the flight deck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections. Notwithstanding the requirements of § 121.587, the cockpit door, if required, may remain open during such inspections.

§ 121.583 [Amended]

73. Section 121.583(a) is amended by removing the reference to ''‚121.161‚.''

74. Section 121.587 is amended by revising paragraph (a) and adding a new paragraph (b)(3) to read as follows:

§ 121.587 Closing and locking of flight crew compartment door.

(a) Except as provided in paragraph (b) of this section, a pilot in command of an airplane that has a lockable flight crew compartment door in accordance with § 121.313 and that is carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked during flight.

(b) * * *

(3) When a jumpseat is being used by persons authorized under § 121.547 in airplanes in which closing and locking the flight crew compartment door is impossible while the jumpseat is in use.

§ 121.589 [Amended]

75. Section 121.589 is amended in paragraphs (b) and (c)(2) by removing the reference ''§ 121.285(c) of this part'' and adding in its place ''§ 121.285 (c) and (d).''

76. Section 121.590 is revised to read as follows:

§ 121.590 Use of certificated land airports.

(a) Except as provided in paragraph (b) of this section or unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(b) Certificate holders conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate those airplanes into airports not certificated under part 139 of this chapter if the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

77. Section 121.639 is amended by revising the section heading and revising paragraph (c) to read as follows:

§ 121.639 Fuel supply: All domestic operations.

* * * * *

(c) Thereafter, to fly for 45 minutes at normal cruising fuel consumption or, for certificate holders who are authorized to conduct day VFR operations in their operations specifications and who are operating nontransport category airplanes type certificated after December 31, 1964, to fly for 30 minutes at normal cruising fuel consumption for day VFR operations.

78. Section 121.643 is amended by revising the section heading and paragraph (a)(3) to read as follows:

§ 121.643 Fuel supply: Nonturbine and turbo-propeller-powered airplanes; supplemental operations.

(a) * * *

(3) Thereafter, to fly for 45 minutes at normal cruising fuel consumption or, for certificate holders who are authorized to conduct day VFR operations in their operations specifications and who are operating nontransport category airplanes type certificated after December 31, 1964, to fly for 30 minutes at normal cruising fuel consumption for day VFR operations.

* * * * *

79. Section 121.703 is amended in paragraph (d) by removing the words ''FAA Flight Standards District Office charged with the overall inspection of the certificate holder'' and adding, in their place, the words ''certificate-holding district office'' and by revising paragraphs (a)(12) and (f) to read as follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(12) An unwanted landing gear extension or retraction, or an unwanted opening or closing of landing gear doors during flight;

* * * * *

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of 14 CFR part 830.

* * * * *

80. Section 121.713 is revised to read as follows:

§ 121.713 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least 1 year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35 (g)(2), (g)(7), and (g)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

§ 121.715 [Removed]

81. Section 121.715 is removed.

82. Appendix K is added to part 121 to read as follows:

Appendix K to Part 121—Performance Requirements for Certain Turbopropeller Powered Airplanes

1. *Applicability.* This appendix specifies requirements for the following turbopropeller powered airplanes that must comply with the Airplane Performance Operating Limitations in §§ 121.189 through 121.197:

a. After December 20, 2010, each airplane manufactured before March 20, 1997 and type certificated in the:

i. Normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

ii. Normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23 of 14 CFR part 23.

iii. Normal category, and complies with the additional airworthiness standards in appendix A of part 135 of this chapter.

iv. Normal category, and complies with section 1.(a) or 1.(b) of SFAR No. 41 of 14 CFR part 21.

b. After March 20, 1997, each airplane:

i. Type certificated prior to March 29, 1995, in the commuter category.

ii. Manufactured on or after March 20, 1997, and that was type certificated in the normal category, and complies with the requirements described in paragraphs 1.a.i through iii of this appendix.

2. *Background.* Sections 121.157 and 121.173(b) require that the airplanes operated under this part and described in paragraph 1 of this appendix, comply with the Airplane Performance Operating Limitations in §§ 121.189 through 121.197. Airplanes described in § 121.157(f) and paragraph 1.a of this appendix must comply on and after December 20, 2010. Airplanes described in § 121.157(e) and paragraph 1.b of this appendix must comply on and after March 20, 1997. (Airplanes type certificated in the normal category, and in accordance with SFAR No. 41 of 14 CFR part 21, as described in paragraph 1.a.iv of this appendix, may not be produced after October 17, 1991.)

3. *References.* Unless otherwise specified, references in this appendix to sections of part 23 of this chapter are to those sections of 14 CFR part 23, as amended by Amendment No. 23–45 (August 6, 1993, 58 FR 42156).

Performance

4. *Interim Airplane Performance Operating Limitations.*

a. Until December 20, 2010, airplanes described in paragraph 1.a of this appendix may continue to comply with the requirements in subpart I of part 135 and § 135.181(a)(2) of this chapter that apply to small, nontransport category airplanes.

b. Until March 20, 1997, airplanes described in paragraph 1.b.i of this appendix may continue to comply with the requirements in subpart I of part 135 of this chapter that apply to commuter category airplanes.

5. *Final Airplane Performance Operating Limitations.*

a. Through an amended type certification program or a supplemental type certification program, each airplane described in paragraph 1.a and 1.b.ii of this appendix must be shown to comply with the commuter category performance requirements specified in this appendix, which are included in part 23 of this chapter. Each new revision to a current airplane performance operating limitation for an airplane that is or has been demonstrated to comply, must also be approved by the Administrator. An airplane approved to the requirements of section 1.(b) of SFAR No. 41 of 14 CFR part 21, as described in paragraph 1.a.iv of this appendix, and that has been demonstrated to comply with the additional requirements of section 4.(c) of SFAR No. 41 of 14 CFR part 21 and International Civil Aviation Organization Annex 8 (available from the FAA, 800 Independence Avenue SW., Washington, DC 20591), will be considered to be in compliance with the commuter category performance requirements.

b. Each turbopropeller powered airplane subject to this appendix must be demonstrated to comply with the airplane performance operating limitation requirements of this chapter specified as follows:

i. Section 23.45 Performance General.

ii. Section 23.51 Takeoff.

iii. Section 23.53 Takeoff speeds.

iv. Section 23.55 Accelerate stop distance.

v. Section 23.57 Takeoff path.

vi. Section 23.59 Takeoff distance and takeoff run.

vii. Section 23.61 Takeoff flight path.

viii. Section 23.65 Climb: All engines operating.

ix. Section 23.67 Climb: one engine inoperative.

x. Section 23.75 Landing.

xi. Section 23.77 Balked landing.

xii. Sections 23.1581 through 23.1589 Airplane flight manual and approved manual material.

6. *Operation.* After compliance with the final airplane performance operating limitations requirements has been demonstrated and added to the Airplane Flight Manual performance data of the affected airplane, that airplane must be operated in accordance with the performance limitations of §§ 121.189 through 121.197.

83. A new appendix L is added to part 121 to read as follows:

Appendix L to Part 121—Type Certification Regulations Made Previously Effective

Appendix L lists regulations in this part that require compliance with standards contained in superseded type certification regulations that continue to apply to certain

transport category airplanes. The tables set out citations to current CFR section, applicable aircraft, superseded type certification regulation and applicable time periods, and the CFR edition and Federal Register documents where the regulation having prior effect is found. Copies of all superseded regulations may be obtained at the Federal Aviation Administration Law Library, Room 924, 800 Independence Avenue SW., Washington, DC.

Part 121 section	Applicable aircraft	Provisions: CFR/FR references
§ 121.312(a)(1)(i)	Transport category; or nontransport category type certificated before January 1, 1965; passenger capacity of 20 or more; manufactured prior to August 20, 1990.	Heat release rate testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect August 20, 1986: 14 CFR parts 1 to 59, Revised as of January 1, 1986.
§ 121.312(a)(1)(ii)	Transport category; or nontransport category type certificated before January 1, 1965; passenger capacity of 20 or more; manufactured after August 19, 1990.	Heat release rate and smoke testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect September 26, 1988: 14 CFR parts 1 to 59, Revised as of January 1, 1988, and amended by Amdt 25–66, 53 FR 32584, August 25, 1988
§ 121.312(a)(2)(i)	Transport category; or nontransport category type certificate before January 1, 1965; application for type certificate filed prior to May 1, 1972; substantially complete replacement of cabin interior on or after May 1, 1972.	Provisions of 14 CFR 25.853 in effect on April 30, 1972: 14 CFR parts 1 to 59, Revised as of January 1, 1972.
§ 121.312(a)(3)(i)	Transport category type certificated after January 1, 1958; nontransport category type certificated after January 1, 1958, but before January 1, 1965; passenger capacity of 20 or more; substantially complete replacement of the cabin interior on or after March 6, 1995.	Heat release rate testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995; and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect August 20, 1986: 14 CFR parts 1 to 59, Revised as of January 1, 1986.
§ 121.312(a)(3)(ii)	Transport category type certificated after January 1, 1958; nontransport category type certificated after January 1, 1958, but before January 1, 1965; passenger capacity of 20 or more; substantially complete replacement of the cabin interior on or after August 20, 1990.	Heat release rate and smoke testing. 14 CFR 25.853(d) in effect March 6, 1995; 14 CFR parts 1 to 59, Revised as of January 1, 1995; and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR § 25.853(a–1) in effect September 26, 1988: CFR, Title 14, Parts 1 to 59, Revised as of January 1, 1988, and amended by Amdt 25–66, 53 FR 32584, August 25, 1988.
§ 121.312(b) (1) and (2)	Transport category airplane type certificated after January 1, 1958; Nontransport category airplane type certificated after December 31, 1964.	Seat cushions. 14 CFR 25.853(c) effective on November 26, 1984: 14 CFR parts 1 to 59, Revised as of January 1, 1984, and amended by Amdt 25–59, 49 FR 43188, October 26, 1984.
§ 121.312(c)	Airplane type certificated in accordance with SFAR No. 41; maximum certificated takeoff weight in excess of 12,500 pounds.	Compartment interior requirements. 14 CFR 25.853(a) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a), (b–1), (b–2), and (b–3) in effect on September 26, 1978: 14 CFR parts 1 to 59, Revised as of January 1, 1978.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

84. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 40103, 44113, 44701–44705, 44707–44714, 44716–44717, and 44722.

85. The heading for 14 CFR part 125 is revised as set forth above.

86. Paragraph (b)(4) of § 125.1 is revised to read as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter; or

* * * * *

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS [REMOVED]

87. Part 127 is removed.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

88. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701, 44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

89. The heading for part 135 is revised to read as set forth above.

90. Section 135.1 is amended by revising paragraph (a) and by removing and reserving paragraph (b) to read as follows:

§ 135.1 Applicability.

(a) This part prescribes rules governing—

(1) The commuter or on-demand operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 of 14 CFR part 121 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58 of 14 CFR part 121.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, except for operations subject to SFAR 50–2, these operations, when conducted for compensation or hire, must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

* * * * *

91. Section 135.2 is revised to read as follows:

§ 135.2 Compliance schedule for operators that transition to part 121 of this chapter; certain new entrant operators.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that was issued an air carrier or operating certificate and operations specifications under the requirements of part 135 of this chapter or under SFAR No. 38–2 of 14 CFR part 121 before January 19, 1996, and that conducts scheduled passenger-carrying operations with:

(i) Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats;

(ii) Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats; or

(iii) Turbojet engine powered airplanes having a passenger seat configuration of 1–30 seats.

(2) Each person who, after January 19, 1996, applies for or obtains an initial air carrier or operating certificate and operations specifications to conduct scheduled passenger-carrying operations in the kinds of airplanes described in paragraphs (a)(1)(i), (a)(1)(ii), or paragraph (a)(1)(iii) of this section.

(b) *Obtaining operations specifications.* A certificate holder described in paragraph (a)(1) of this section may not, after March 20, 1997, operate an airplane described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section in scheduled passenger-carrying operations, unless it obtains operations specifications to conduct its scheduled operations under part 121 of this chapter on or before March 20, 1997.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), (e), and (i) of this section, each certificate holder described in paragraphs (a)(1) of this section shall comply with each applicable requirement of part 121 of this chapter on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. Except as provided in paragraphs (d) and (e) of this section, each person described in paragraph (a)(2) of this section shall comply with each applicable requirement of part 121 of this chapter on and after the date on which that person is issued a certificate and operations specifications under part 121 of this chapter.

(d) *Delayed compliance dates.* Unless paragraph (e) of this section specifies an earlier compliance date, no certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after a date listed in this paragraph unless that airplane meets the applicable requirement of this paragraph:

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seating configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) (i), (ii), and (iii) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1) (i), (ii), and (iii) of this section:

(i) December 22, 1997:

(A) Section 121.289, Landing gear aural warning.

(B) Section 121.308, Lavatory fire protection.

(C) Section 121.310(e), Emergency exit handle illumination.

(D) Section 121.337(b)(8), Protective breathing equipment.

(E) Section 121.340, Emergency flotation means.

(ii) December 20, 1999: Section 121.342, Pitot heat indication system.

(iii) December 20, 2010:

(A) For airplanes described in § 121.157(f), the Airplane Performance Operating Limitations in §§ 121.189 through 121.197.

(B) Section 121.161(b), Ditching approval.

(C) Section 121.305(j), Third attitude indicator.

(D) Section 121.312(c), Passenger seat cushion flammability.

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in this paragraph (d) unless that airplane meets the applicable requirement listed in this paragraph (d):

(i) December 22, 1997:

(A) Section 121.308, Lavatory fire protection.

(B) Section 121.337(b) (8) and (9), Protective breathing equipment.

(C) Section 121.340, Emergency flotation means.

(ii) December 20, 2010: Section 121.305(j), Third attitude indicator.

(e) *Newly manufactured airplanes.* No certificate holder that is described in paragraph (a) of this section may operate under part 121 of this chapter an airplane manufactured on or after a date listed in this paragraph (e) unless that airplane meets the applicable requirement listed in this paragraph (e).

(1) For nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats:

(i) Manufactured on or after March 20, 1997:

(A) Section 121.305(j), Third attitude indicator.

(B) Section 121.311(f), Safety belts and shoulder harnesses.

(ii) Manufactured on or after December 22, 1997: Section 121.317(a), Fasten seat belt light.

(iii) Manufactured on or after December 20, 1999: Section 121.293, Takeoff warning system.

(2) For transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats manufactured on or after March 20, 1997: Section 121.305(j), Third attitude indicator.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after March 29, 1995, in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before March 19, 1996 each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under part 121 of this chapter. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of part 121 of this chapter on or before March 20, 1997; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

(h) *Continuing requirements.* Until each certificate holder that is covered by paragraph (a) of this section meets the specific compliance dates listed in paragraphs (d) and (e) of this section, the certificate holder shall comply with the applicable airplane and equipment requirements of part 135 of this chapter.

(i) *Delayed pilot age limitation.* (1) Notwithstanding § 121.383(c) of this chapter, and except as provided in paragraph (i)(2) of this section, a certificate holder covered by paragraph (a)(1) of this section may use the services of a person as a pilot after that person has reached his or her 60th birthday, until December 20, 1999. Notwithstanding § 121.383(c) of this chapter, and except as provided in paragraph (i)(2) of this section, a person may serve as a pilot for a certificate holder covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999.

(2) Paragraph (i)(1) applies only to persons who were employed as pilots by a certificate holder covered by paragraph (a)(1) of this section on or before March 20, 1997.

§§ 135.5, 135.9, 135.10, 135.11, 135.13, 135.15, and 135.17 [Removed]

92. Sections 135.5, 135.9, 135.11, 135.13, 135.15, and 135.17 are removed.

§ 135.7 [Amended]

93. Section 135.7 is amended by removing ''§ 135.5'' wherever it appears and adding in its place ''part 119 of this chapter''.

§ 135.21 [Amended]

94. Section 135.21 (b) and (f) are amended by removing ''principal operations base'' and adding in its place ''principal base of operations.''

§ 135.23 [Amended]

95. Section 135.23(a) is amended by removing the reference ''§ 135.37(a)'' and adding in its place ''§ 119.69(a) of this chapter''.

§ 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 [Removed]

96. Section 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 are removed.

97. Section 135.41 is revised to read as follows:

§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate operating under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 135.43 [Amended]

98. Section 135.43 is amended by:

a. Revising ''FAA Flight Standards District Office charged with the overall inspection'' in paragraph (b) to read ''certificate-holding district office.''

b. Revising ''Flight Standards District Office'' in paragraph (c) to read ''certificate-holding district office.''

99. Section 135.64 is added to read as follows:

§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35 (h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

§ 135.105 [Amended]

100. Section 135.105(a) is amended by revising the phrase ''by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

§ 135.165 [Amended]

101. Section 135.165(a) is amended by revising the phrase ''carrying passengers as a *Commuter Air Carrier*'' as defined in part 298 of this title,'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

102. Section 135.243(a) is revised to read as follows:

§ 135.243 Pilot in command qualifications.

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—

(1) Of a turbojet airplane, of an airplane having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and

class ratings and, if required, an appropriate type rating for that airplane.

(2) Of a helicopter in a scheduled interstate air transportation operation by an air carrier within the 48 contiguous states unless that person holds an airline transport pilot certificate, appropriate type ratings, and an instrument rating.

* * * * *

§ 135.244 [Amended]

103. Section 135.244(a) is amended by revising the phrase ''by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

Issued in Washington, D.C. on December 12, 1995.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator.

[FR Doc. 95–30545 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 27993; Amdt No. 121–250, 135–57]

RIN 2120–AC79

Air Carrier and Commercial Operator Training Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the training and qualification requirements for certain air carriers and commercial operators by requiring certain certificate holders operating under part 135, and permitting certain others, to comply with part 121 training, checking, and qualification requirements, and mandating Crew Resource Management (CRM) training requirements for part 121 and 135 operators. The FAA is amending these rules in order to make certain part 135 training requirements as comprehensive as part 121 requirements and to incorporate recent knowledge about human performance factors. The rule also allows certain part 135 certificate holders to take advantage of sophisticated aircraft simulator training technologies presently available to part 121 certificate holders. By increasing the training and qualification requirements for certain operators, the rule is intended to reduce the risk of accidents and incidents. By mandating CRM training for certificate holders required to comply with part 121 training requirements, the rule is also intended to reduce the number of accidents and incidents that could be attributed to a lack of crew communication and coordination.

EFFECTIVE DATE: March 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Availability of the Rule

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the amendment number and title of this rule.

Background

Parts 121 and 135 of Title 14 of the code of Federal Regulations contain rules that specify training program requirements for air carriers and certain commercial operators. Those rules specify the qualification requirements of crewmembers, flight and simulator instructors, check airmen, aircraft dispatchers, and other operations personnel. The most detailed and rigorous training and qualification requirements are those contained in subparts N and O of part 121. Although subparts N and O have been amended a number of times in recent years, most of the amendments concern the use of simulators, training devices, or specific training requirements such as security and the transportation of hazardous materials. No comprehensive changes have been made to these subparts since December 1969.

The FAA's most immediate concerns regarding the training and qualification regulations in part 121 and part 135 are twofold. First, compared to part 121 training regulations, part 135 training regulations do not provide a balanced mix of training and checking. Part 121 training and qualification regulations require both recurrent training as well as recurrent flight checks. Although part 135 requires flight training, flight checks can be repeatedly substituted for required training. Second, current parts 121 and 135 training regulations do not incorporate recent knowledge about the significance of human performance factors (e.g., communication, decision-making, leadership, management), generally referred to as crew resource management (CRM), in safe flight operations.

In December, 1986, in response to a safety recommendation from the national Transportation Safety Board (NTSB), the FAA specifically addressed the human factors training issue by initiating an aviation behavioral technology program. This ongoing program consists of projects that, among other things, increase the use of line operational simulations (LOS) i.e. simulator training using a typical operational passenger flight scenario, in a controlled training environment designed to improve cockpit/cabin communication and coordination skills, and pilot decision-making skills.

In June, 1988, the NTSB issued safety recommendation A–88–71 concerning CRM training, as a result of a Northwest Airlines crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed. The NTSB noted that both pilots had received training only as individuals and not as an integral part of the cockpit crew during their last simulator training and proficiency checks. The last CRM training they had each received was 3.5 hours of ground school of general CRM training in 1983. The NTSB implied that the accident might have been prevented had the flight crew received adequate CRM training.

After soliciting ideas from other government agencies and from the aviation community, the FAA published a proposed Special Federal Aviation Regulation (SFAR) and an accompanying draft advisory circular (AC) in the Federal Register (54 FR 7670, February 22, 1989). These documents proposed a voluntary, alternative method of complying with the training requirements in current regulations. The voluntary alternative training is called an ''advanced qualification program'' (AQP). After considering comments received, the FAA issued a final SFAR 58, Advanced Qualification Program, and an accompanying Advisory Circular 120–54 (55 FR 40262, October 2, 1990). This voluntary program applies to certificate holders operating under part 121 or part 135 that elect the alternative requirements of AQP. The alternative requirement includes CRM training and evaluation, increased use of LOS, use of training centers, and the evaluation of flight training devices and flight simulators.

To date, the larger and more sophisticated air carriers have taken advantage of the voluntary program. The FAA expects this to be the case for the foreseeable future. However, the FAA recognizes that some operators, particularly smaller operators, may elect not to participate in the voluntary AQP program and will instead comply with current training requirements in parts 121 and 135; therefore, the FAA is amending the current training requirements of parts 121 and 135 to address the most immediate concerns regarding improved aircrew training and qualification standards. In particular, all certificate holders operating under part 121, and those certificate holders operating under part 135 who are authorized or required under this final rule to follow part 121 training and qualification requirements, are now also required by this rule to include CRM in their training programs.

Another recommendation from the National Transportation Safety Board (NTSB) was that commuter air carriers conducting operations under part 135 with airplanes that require two pilot crewmembers should also be required to comply with the training, checking, and qualification requirements of part 121.

Many regional air carriers operate under both a part 121 and a part 135 certificate because of the type of airplanes they fly. The FAA has encouraged these regional air carriers to train and qualify their pilots under part 121 rather than maintaining two separate training programs. Several of these air carriers have voluntarily required their pilots to be trained, checked, and qualified under part 121 or its equivalent.

The Rule

General Applicability

The amendments to part 121 apply to all certificate holders operating under part 121 and to all certificate holders operating under part 135 that are required to comply with the part 121 training and qualification requirements. The requirements also apply to certain part 135 certificate holders if they request and receive FAA authorization to comply with the part 121 training and qualification requirements.

Commuter Operations Conducted Under Part 135

Part 135 commuter operations serving small and medium sized communities carry millions of passengers every year. The Regional Airline Association (RAA), whose membership consists primarily of commuter air carriers, estimates that more than 61 million passengers will be carried by RAA member airlines in 1997. Comprehensive training requirements, including CRM training, are important to the safety of these operations. Part 121 training benefits these operations because it provides more emphasis on training, whereas current part 135 rules rely more heavily on the testing and checking requirements set forth in subparts G and H of part 135. Part 121 also allows greater use of simulators which results in two benefits:

(1) Under § 121.407(c), simulator training can be substituted for repetitive proficiency checks (§ 121.441) and certain recency requirements (§ 121.439). This allows for greater flexibility and a more effective mix of training and checking activities.

(2) Simulator training may include hazardous scenarios that would be imprudent to include in inflight training. Thus simulator training increases pilot proficiency in dealing with such situations.

Because subparts N and O emphasize both periodic simulator training and checking programs rather than the continuous checking and testing emphasis of subparts E, G, and H of part 135, this final rule requires the following certificate holders conducting commuter operations under part 135 to comply with the training, checking, and qualification requirements of part 121, subparts N and O, in place of the requirements of subparts E, G, and H of part 135: (1) Those that conduct commuter operations with airplanes for which two pilots are required by aircraft type certification rules, and (2) those that conduct commuter operations with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more.

This final rule also allows the Administrator to authorize any other certificate holders that conduct operations under part 135 to comply with the training, checking, and qualification requirements of subparts N and O part 121. However, because of the size and complexity of the airplanes and the number and length of the flights conducted by these certificate holders, the FAA will permit these certificate holders to comply lower number of hours of operating experience under part 135 rather than those hours specified in § 121.434.

Each part 135 certificate holder that will comply with part 121 training requirements is required to submit and obtain FAA approval of a transition plan for converting from part 135 to the part 121 training and checking requirements. In that plan, the certificate holder should address issues such as: (1) Whether currently employed crewmembers need additional training to meet minimum part 121 training and qualification requirements; and (2) how the certificate holder's training curriculum will be modified, if necessary, to meet part 121 requirements.

Under § 121.405(g), as revised herein, a certificate holder may request a reduction in the programmed hours of ground training from the minimum hours required under present § 121.419. A reduction may be warranted in cases where a certificate holder shows that the airplanes it operates under part 135 are less complex than those generally operated under part 121. For this reason, certain part 135 certificate holders may have to modify their training program.

Crew Resource Management (CRM) Training

A major objective of this rule is to require all certificate holders operating under part 121 and those part 135 certificate holders who must comply with subparts N and O of part 121 as a result of this final rule to provide CRM training.

CRM training teaches crewmembers and aircraft dispatchers to use effectively all resources available to the crew (e.g. hardware, software, and all persons involved in aircraft operation) to achieve safe and efficient flight operations. Sections 121.404, 121.419(a)(1), 121.421(a)(1), 121.422(a)(1), and 121.427(b)(4) provide for the approval of CRM training and require CRM to be incorporated into ground training for flight crewmembers and aircraft dispatchers. Also, as part of this amendment, part 135 certificate holders who conduct training under part 121 must provide CRM training as part of their approved training programs.

The FAA anticipates that for a CRM training program to be approved, it would include three distinct components: (1) An indoctrination/awareness component, often called ''initial CRM training,'' during which CRM issues are defined and discussed; (2) a recurrent practice and feedback component during which trainees gain experience with CRM techniques; and (3) a continuing reinforcement component which ensures that CRM principles are addressed throughout the trainee's employment with the certificate holder. Advisory Circular (AC) 120–51B, as amended, ''Crew Resource Management Training,'' and AC 121–32, ''Dispatch Resource Management'' provide basic guidance in establishing approved CRM training. (In this amendment, the term ''CRM'' includes both crew resource

management and dispatcher resource management.) DOT/FAA/RD–92–26, ''Crew Resource Management: An Introductory Handbook,'' goes into further detail.

Section 121.404 includes initial CRM training for persons already employed by the certificate holder, and for new employees of the certificate holder, unless a new employee has completed the applicable initial CRM training from another certificate holder. The FAA anticipates that this component will be very similar for all certificate holders.

CRM initial indoctrination/awareness training is a curriculum segment with a variety of instructional methods, which can include lectures, discussions, films, practice in an operational setting or a line operational simulation (LOS) session, and feedback with a facilitator. CRM initial indoctrination/awareness training must be provided to all crewmembers and aircraft dispatchers; this training is in addition to existing training. Under § 121.406, the FAA may credit some crew resource management or dispatcher resource management (CRM/DRM) training received before the compliance date in the rule. Some operators have been providing CRM/DRM training under AQP or under voluntary programs. In appropriate circumstances, the FAA may credit part or all of such training toward the initial ground CRM/DRM training which is required by §§ 121.419, 121.421, and 121.422.

The recurrent practice and feedback component of CRM training is best accomplished through the use of simulators and video equipment. However, if the use of simulators is not practical, CRM scenarios can be created without simulators, and practice can be tape recorded to provide feedback. Feedback should be directed by a facilitator who has had appropriate CRM training. Practice and feedback provide participants with critiques by one's self and peers to improve communication, decision-making, and leadership skills.

Numerous comments concerning requiring minimum program hours for CRM training were submitted. Regarding these comments, the FAA has determined that specifying a minimum number of programmed hours for CRM training is not required. Rather, the FAA will consider instructional techniques, number of students in a class, the use of simulation, new training technology, the use of student feedback, the measurement of training outcomes, as well as the number of hours of training time in evaluating and approving CRM training programs.

Many certificate holders already have approved CRM programs that are highly effective. The number of hours in these programs vary, however, the FAA's experience with these highly successful CRM training programs indicates that the most effective programs contain approximately 12 hours for pilot initial CRM training and 8 hours for flight attendant initial CRM training. Recurrent training under these established programs contain approximately 4 hours for pilots and flight engineers and 2 hours for flight attendants and aircraft dispatchers. In this final rule, the increase in minimum programmed hours for initial and recurrent training as proposed in Notice 94–35 (59 FR 64272, December 13, 1994) has been removed. The FAA will consider each certificate holder's CRM training program based on the program's ability to reach the training objectives rather than requiring minimum programmed hours for this training.

Editorial Clarification

The change to § 121.135(b)(15) makes it clear that the certificate holder's manual must include the entire training program curriculum required under § 121.403, not just the program affecting airmen.

Effective Date and Compliance Dates

The FAA has established an effective date of March 19, 1996. By that date, certificate holders operating under part 135 who are required to comply with applicable part 121 training and qualification requirements, must submit the transition plan required under § 135.3. The compliance date for training and qualifying under part 121 rules is 1 year after the effective date of the final rule.

For initial CRM training, the FAA has established a compliance date 2 years after the effective date of the final rule for flight crewmembers, and 3 years after the effective date of the final rule for flight attendants and aircraft dispatchers. After the applicable date, a certificate holder is prohibited from using a crewmember or dispatcher unless that person has completed approved crew or dispatcher resource management initial training. Since a large number of certificate holder employees are required to have this training, the delayed compliance dates will allow sufficient time to train instructors conducting CRM training, and then, in turn, provide this training to all crewmembers and dispatchers.

Consideration of Comments to the NPRM

On December 13, 1994, the FAA proposed these changes in a Notice of Proposed Rulemaking 94–35 (59 FR 64272). Seventeen comments were received. The following is a discussion and the FAA's response to the substantive subject areas.

Improvements in Safety

Comment: The National Transportation Safety Board (NTSB) strongly supports this proposal. The Board believes that the proposal is responsive to a number of their safety recommendations regarding previously noted shortcomings in the human factors aspects of flightcrew performance. It specifically cites and supports the greater use of flight simulators, and actions taken to improve pilot operating experience in scheduled air carriers. The Board believes that the adoption of this proposal will contribute significantly toward improving the level of safety in commuter airline operations as well as major air carriers.

FAA Response: The FAA welcomes the comments of the NTSB, and has given them due consideration in the development of this final rule.

Crew Resource Management Training Program Content

Comments: A number of commenters address the proposed requirement to add a specific number of training hours to be devoted specifically to CRM training.

USAIR Express comments that it supports the addition of CRM, but the hours stated in the regulation should be planned hours rather than programmed hours, indicating that this would provide more flexibility depending on class size. Also, all the training should be proficiency based. Pilot initial training should be 8 hours; 6 hours for flight attendants and dispatchers.

An individual commenter states that he supports the addition of CRM training to the training curriculum and recommends a requirement for at least 5 hours of full motion simulator CRM training for both initial and recurrent training, in addition to 24 classroom hours of initial training. Recurrent CRM training should be conducted annually and include 16 classroom hours.

The Air Line Pilots' Association (ALPA) recommends that the programmed times stated in the NPRM should be considered minimums on which to build a comprehensive CRM training program.

The Coalition of Flight Attendant Unions provides a joint comment for a

number of flight attendant associations and concurs with the requirement of 8 hours for initial flight attendant training, but recommends an additional 2 hours be added to recurrent training, raising the requirement from 12 to 14 hours.

The Air Transport Association recommends that the FAA use a ''train to proficiency'' concept rather than specifying a certain number of hours for CRM training. This training should be integrated into other appropriate training.

Flight Safety International comments that the training should be ''objective based'' rather than specifying ''block hours.''

United Airlines (UAL) comments that it is in complete agreement with the proposal, except requiring programed hours. UAL states that ''the notion of programmed hours is bankrupt and that no training professional judges the adequacy of a training program by the number of hours spent on a given subject.''

The Regional Airline Association recommends removing the ''hard time'' requirement of a specific number of hours for CRM training and instead recommends that CRM training be integrated into the operator's existing training program in an appropriate manner.

FAA Response: As stated previously, the FAA has removed the requirement for minimum programmed hours for approved CRM training programs. The FAA agrees that CRM training should be objective-based rather than based on a specific number of required hours. Therefore, in complying with this final rule, each individual certificate holder's CRM training program will be evaluated on its design to reach its stated training objectives. In evaluating CRM training programs, the FAA will consider how these training objectives are met and how the certificate holder measures training outcomes. The FAA will consider instructional techniques, class size, the use of simulation, new training technology, overall quality of training, and most importantly, student/instructor feedback and other evaluation methods in determining the adequacy of CRM training programs. The FAA also agrees that the principles of CRM should be integrated into other appropriate training and that these principles be practiced routinely throughout other company flight operations.

Comment: The Department of Psychology of the University of Texas at Austin supports the proposal to add CRM training to the rule. However, they state that CRM training must be designed to the specific needs of the airline and its operating environment and that an evaluation of the human factors training must be included in each certificate holder's approved CRM program.

FAA Response: The FAA agrees with the commenter that CRM training programs should be designed to meet the specific needs of the certificate holder's operating environment and that a continuing assessment of the CRM training program should be accomplished to determine if the program is achieving its goals. Information on designing CRM programs that are specific to the needs of the certificate holder and its operating environment and the evaluation of the CRM training program are included in AC 120–51B. Also, § 121.405(d) allows the training program to be tailored to the individual operator.

Comment: USAIR Express comments that initial new-hire CRM training should be differentiated from initial, transition, and upgrade requirements. CRM training should also be integrated into other training rather than being a separate module in the general subjects section.

FAA Response: USAir Express states that initial new hire CRM training should differ from other CRM training. The FAA agrees that CRM training needs to be tailored to the needs of those being trained and guidance is provided on this subject in AC 120–51B. The FAA also agrees that CRM training principles should be incorporated into all the certificate holder's training. However, the principles of CRM must be learned first before they can be integrated into the certificate holder's entire operation.

Comment: An individual commenter recommends that CRM training be conducted for at least 3 hours in a full motion simulator.

FAA Response: Training in a full motion simulator would provide excellent training; however the FAA believes that mandating CRM training in a ''full motion'' simulator is not necessary to learn and practice CRM skills.

Comment: The Coalition of Flight Attendant Unions mentions that there is no provision to address giving or denying credit for training already accomplished if the employee changes carriers, for example, moving from a regional carrier to the parent carrier. The group also proposes rewriting § 121.421 (iii) to include wording from AC 120–51B which would ensure a minimum level of quality control.

FAA Response: Section 121.404 as adopted in this final rule provides that a flight attendant who receives initial training from one certificate holder does not have to repeat that training for another certificate holder.

The FAA does not agree with the commenter that the regulation as proposed should be rewritten to include the three CRM training phases as discussed in AC 120–51B, i.e., initial indoctrination and awareness, practice and feedback, and evaluation phases. An approved CRM training program should include the training objectives stated in the AC. However, the FAA believes there is more than one way to achieve these training objectives. Each certificate holder must determine the most practical and efficient way to meet the general training criteria stated in AC 120–51B.

Comment: The Air Transport Association (ATA) recommends reorganizing some of the proposed sections, generally consolidating them into other sections of the proposed rule; and provides a detailed rewrite of the § 121.423.

FAA Response: The FAA does not agree that the rule language should be rewritten under a new § 121.423, since it appears that ATA's rewrite basically provides training credit for CRM training received after the effective date of this final rule; this credit is already provided in § 121.406 which will be adopted as proposed.

Comment: Flight Safety International recommends that the rule include the requirement for assessment, design, and implementation of the CRM training program. The commenter provided a detailed discussion how to improve each of these facets.

FAA Response: The comments of Flight Safety International regarding the requirement for assessment, design and implementation of the CRM training program have merit and are addressed in AC 120–51B.

Comment: The Regional Airline Association generally supports the rule but recommends that the rule include specific reference to part 121, Appendices E, F, and H, and the record keeping requirements of § 121.683.

FAA Response: The FAA does not concur regarding the recommendation that the rule include specific reference to Appendices E, F, and H, which elaborate on flight maneuvers. The certificate holder may include CRM while training on flight maneuvers, but the FAA does not want to limit or mandate CRM during each specific training maneuver. Also, the FAA believes that the detailed record keeping requirements of § 135.63 are more than adequate for affected part 135 operators.

Comment: One individual commenter believes that CRM could not be defined; to attempt to do so, ''goes exactly against the spirit of CRM.'' Instead, he felt that the fightcrew should pursue ''a spontaneous program of people trying to discover ways to relate more harmoniously.'' Therefore, any effort to formalize CRM training was counterproductive.

FAA Response: The FAA does not agree with this commenter. CRM skills can be learned and improved by both formal training and the informal integration of CRM skills into the certificate holder's organizational culture.

Scope of CRM Training

Comment: One individual commenter and one professional association note that maintenance technicians were not addressed in the notice and recommend that there should be a proposed change to part 66 mandating CRM for maintenance technicians.

FAA Response: The FAA appreciates the comment. However, including maintenance technicians in this rule is outside the scope of the NPRM.

Comments: A number of commenters address the issue of the importance of the training given to those who are responsible to approve, conduct, and evaluate CRM training.

The Department of Psychology of the University of Texas at Austin feels that there should be provisions for specialized training of check pilots, flight instructors, and FAA Flight Standards personnel who must not only be aware of the concepts of CRM, but also must be able to debrief and instruct others in the facets of the program. The commenter also suggests that CRM principles and requirements be included in the airline's flight manuals.

USAIR Express comments that the FAA's Principal Operations Inspectors must be trained in detail to effectively assess and evaluate CRM training programs; otherwise, operators may have difficulty getting curriculum segments approved or getting credit for previously conducted training.

ALPA notes that the facilitators of CRM training must have the highest experience and qualifications to properly evaluate this training.

Flight Safety International emphasizes that instructors and check pilots need specialized training in CRM observation and debriefing skills.

The Regional Airline Association notes that FAA inspectors who are responsible for evaluating, approving, and monitoring the effectiveness of the operator's CRM programs will need additional training for this responsibility.

The Air Transport Association comments that the FAA should ensure that the inspectors who evaluate this program must be highly trained.

FAA Response: The FAA agrees with all these commenters. In addition to establishing a training course for POIs, the FAA has included information in the air carrier inspectors' handbook and AC 120–51B that provides guidance in the approval process. This information is also available to instructors and check pilots.

Compliance Period

Comments: The Department of Psychology of the University of Texas at Austin comments that the compliance period of 2 years for flight crews and 3 years for dispatchers and flight attendants seemed excessive and should be shortened.

The group of flight attendant associations recommends that the proposed compliance period of 2 years for pilots, and 3 years for flight attendants and dispatchers, be shortened to 1 year and 2 years respectively, based on the significance of the rule to the traveling public and its ease of implementation.

ALPA fully supports the proposal and strongly urges the FAA to implement the final rule at the earliest opportunity.

FAA Response: The FAA has adopted a compliance period of 2 years for over 76,000 flight crewmembers and 3 years for over 84,000 flight attendants and dispatchers who require initial CRM training. The FAA encourages certificate holders to develop an approved CRM training program and begin training as soon as possible. However, the FAA believes that to require total compliance in a shorter time than proposed could be a significant economic burden on some certificate holders because training would then have to be accomplished outside the normal, scheduled recurrent training cycle.

Comment Period

Comment: The Alaska Air Carriers' Association suggests extending the comment period to June 23, 1995 to be aligned with another proposal affecting commuter airlines in the area of aircraft certification and general operations.

FAA Response: This action is one in a series of on-going actions to improve the safety of commuter airlines. The effect of this rule is referenced in the recently published NPRM titled Commuter Operations and General Certification and Operations Requirements (60FR16230, March 29, 1995). However, the provisions of this rule are not significantly affected by the other actions proposed in subsequent NPRM's Therefore, this notice will be finalized with due consideration given to all comments received in the current comment period.

Economics

Comment: The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration believes that the FAA overestimated the benefits of CRM training for part 135 operators, mainly citing the belief that CRM training would not be 100% effective. Also, the commenter questions the FAA's position that the rule would not have a significant economic impact on a substantial number of small entities.

Comment: A group of flight attendant associations comments on the estimated cost of initial and recurrent CRM training for flight attendants, providing training costs and per diem information on nine representative carriers.

Comment: The National Air Transport Association expresses concern that, for all part 135 operators who operate aircraft with two pilot crews carrying 10 or more passengers, the proposal may be administratively and economically burdensome. Therefore the Association opposes the FAA proposal to mandate compliance with part 121 training standards. It feels that compliance with part 121 training, including CRM, should be voluntary for part 135 commuter carriers operating aircraft with 10 to 19 seats.

FAA Response: The FAA has reviewed the commenter's points and addressed them in the Regulatory Evaluation of the final rule.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State, and local governments.

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 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 this Final Rule would generate benefits that justify its costs and is a ''significant regulatory action'' as defined in the Executive Order. The FAA estimates that the Final Rule will not have a significant economic impact on a substantial number of small entities. No part of the rule is expected to constitute a barrier to international trade. These analyses are provided in the docket and are summarized below.

Response to Comments on the Original Regulatory Evaluation

Two interested parties submitted comments concerning the preliminary regulatory evaluation. Their comments and FAA's disposition are summarized below by subject area.

Wages

Comment: The Coalition of Flight Attendant Unions states that the $27 hourly compensation rate used for part 121 flight attendants seems ''excessive.''

FAA Response: In response to this comment, the FAA recalculated the hourly compensation rate for part 121 flight attendants based on the Future Aviation Professionals of America's (FAPA) *1994–1995 Flight Attendant Directory of Employers & Salary Survey*. These data support the $27 hourly compensation rate for flight attendants who have been employed for 5 years.

Initial Training

Comment: The Coalition of Flight Attendant Unions states that air carriers do not typically pay or provide benefits to flight attendants during initial training because the trainees are not yet employees. According to the commenter, the provision of lodging and meals during initial training varies among carriers. Many carriers will pay for lodging, some will pay for meals, some provide a small stipend, and some do not defray meal costs at all.

FAA Response: While the FAA agrees that airlines do not necessarily assume the full cost, the agency believes it is appropriate to consider the costs to others including the flight attendants themselves. The FAA believes that if a flight attendant were not attending a training session, the flight attendant would most likely be working at another job earning a wage rate comparable to that of a first year flight attendant. Accordingly, the FAA has calculated costs based on the full hourly compensation rate. The FAA estimates that a first year flight attendant earns hourly compensation of $18.00 for part 135 operators and $20 for part 121 operators. The FAA also estimates that flight attendant training will cost $125 per day for meals and lodging regardless of whether the operator or flight attendant absorbs these costs.

Recurrent Training

Comment: The Coalition of Flight Attendant Unions states that compensation during recurrent training varies among carriers. Some carriers pay no salary during training, while others pay a contractual level substantially below the working flight attendant rate, according to the commenter. Also, some carriers pay per diem while other do not. This commenter provided a brief summary of flight attendant training costs for selected major, national, and regional air carriers.

FAA Response: After reviewing this comment, the FAA has decided to use the compensation rate for a fifth-year flight attendant to compute the compensation rate for recurrent training ($23 for part 135 and $27 for part 121). Based on the discussion above, the evaluation assumes that flight attendants are compensated at their hourly flight rate. Per diem is estimated at $125, regardless of whether the airline or the flight attendant absorbs this cost.

Training Hours

Comment: The Coalition of Flight Attendant Unions states that, based on experience, reductions in training hours are routinely requested and are nearly as routinely granted. The commenter concludes that, following approval of credits and reductions, this rule could result in some carriers absorbing hourly requirements of CRM initial and recurrent training into existing initial and recurrent training programs.

FAA Response: The FAA recognizes this concern, but for purposes of this regulatory evaluation, the cost estimate is based on the average number of planned hours on which established programs are based. For some operators, therefore, such costs may be overstated.

CRM Training Benefits

Comment: The U.S. Small Business Administration (SBA) states that the FAA overestimated the benefits of CRM training for part 135 operators. The SBA states that the FAA assumed that such training would be 100 percent successful in eliminating accidents attributable at least in part to coordination problems. The SBA believes that this is an overly optimistic scenario and encourages the FAA to examine the accident rate of operators who already have CRM programs and use it as the basis for estimating benefits of the training.

The SBA further encourages the FAA to confirm whether the accident rate for part 135 operators resulting from crew coordination problems includes only accidents involving the types of aircraft affected by the rule. According to the commenter, the FAA did not specify whether the accidents involved were the types of part 135 aircraft subject to the rule. In contrast, in estimating the benefits of raising part 135 training to part 121 levels, the FAA specified that the accidents involving part 135 aircraft were of the type affected by the proposal. If the accident rate included part 135 aircraft other than the types covered by the proposed regulation, then the FAA would overestimate the proposal's benefits. For an accurate assessment of CRM's benefits, the FAA must confirm that the accident data used for estimating CRM's benefits is limited to the types of planes covered by the proposal for part 135 operators.

FAA Response: With respect to the comment on effectiveness, the FAA does not expect the rule to be 100 per cent effective. Based on our calculations, the part 135 CRM requirements need to reap only 4 per cent of the estimated benefits to be cost beneficial. The commenter is correct with respect to the accidents included. The final regulatory evaluation has been changed to consider only those accidents involving aircraft affected by this rule.

Regulatory Flexibility Analysis

Comment: The SBA states that the proposal's regulatory flexibility analysis is not in conformance with the Regulatory Flexibility Act (RFA). First, according to the commenter, the FAA did not provide the public with the opportunity to assess the FAA's justification for its criteria for evaluating the significance of a rule's economic impacts. Second, the FAA did not adhere to the procedures for establishing a small business definition different from the definition under § 3 of the Small Business Act. Prior to issuing a final rule, the FAA must make publicly available the development process it used for deriving the threshold criteria for judging the significance of the proposed regulation's economic impact on small entities. The FAA must also consult with the SBA on the use of its alternative small business definition and ask for public comment on the appropriateness of the alternative definition.

FAA Response: The FAA disagrees with this comment. The FAA extensively coordinated the subject criteria and definitions with the appropriate agencies. In 1982, the FAA

published in the Federal Register (47 FR 32825, July 29, 1982) an invitation for public comment on proposed definitions of small entities. At the time, the FAA also provided to the SBA materials on the proposed alternative definitions.

Costs

Part 121 Equivalent Training for Part 135 Crewmembers

The rule requires 121 training and qualification standards for part 135 crewmembers engaged in operations using airplanes certificated for two pilots or having 10 or more passenger seats. Newly hired part 135 pilots and flight attendants will be required to receive the initial part 121 training. Existing part 135 pilots and flight attendants will not need to repeat initial training but will be subject to recurrent training requirements. During their first recurrent training session, however, existing employees must meet the newly required part 121 training and qualifying standards.

Incremental training costs were determined as the difference between current and projected training costs. For example, the incremental cost of initial training was estimated to be $3,999 for a PIC and was determined by adding pilot compensation, travel and per diem, and other costs and subtracting current costs.

Initial training costs for PICs, SICs, and flight attendants will increase by about $230,000 per year. The cost for first year recurrent training for flight crewmembers will increase by $1.3 million because each currently employed crewmember will be required to meet the part 121 training and qualification standards. The cost for recurrent training after the first year will increase by $1.75 million.

The discounted incremental cost to part 135 operators over the ten year period is estimated to be about $17 million.

Part 121 CRM Training

The number of PICs, SICs, and flight engineers undergoing training during the two-year phase-in period equals 65 percent of the existing number of employees plus new hires (the FAA estimates that 35 percent of pilots are already receiving CRM training through the AQP). The cost for the initial two-year phase-in training will be approximately $7.5 million each year. The cost for initial CRM training after the phase-in period (which applies to new hires only) will be approximately $2 million. Recurrent training costs for existing employees will be about $17 million annually.

The number of flight attendants and dispatchers undergoing training during the three-year phase-in period equals the existing number of employees plus new hires. For flight attendants and dispatchers, initial training over the three-year phase-in period will cost about $4 million annually. Initial training after the third year for new hires will amount to approximately $3.5 million annually. Recurrent training for existing employees will cost about $6 million each year.

Over the ten-year period, the total discounted cost will equal about $230 million.

Part 135 CRM Training

CRM awareness training for pilots for the two-year phase-in period will cost approximately $300,000 per year. After the second year, initial training costs will equal about $67,000 each year. Annual recurrent training costs will be about $600,000.

Initial CRM awareness training for flight attendants will cost about $31,000 per year. The cost for initial training conducted after the phase-in period will equal about $12,000 annually. The annual cost for recurrent training will be about $23,000. Over the ten year period, discounted CRM training costs for the part 135 operators will equal about $6 million.

Total Cost

The total discounted cost of the rule will be approximately $253 million over the next 10 years. The cost of CRM training for part 121 operators accounts for the largest portion.

Benefits

Part 135 Training Upgrade

From 1984 through 1993, the NTSB concluded that pilot error was a probable cause of 30 accidents involving part 135 aircraft affected by this rule. (The accidents included in this analysis involved at least a serious injury or substantial airplane damage). Mid-air collisions and accidents due to bad weather are excluded because the training that will be required under this rule would not reduce those types of accidents.

The 30 accidents were responsible for 89 fatalities and 40 serious injuries. During this period, commuter operators flew 25.5 million flights resulting in a commuter accident due to pilot error of 1.1775 accidents per million commuter flights. The average value of avoiding such an accident is estimated to be $9.607 million.

In estimating the maximum potential value of the benefits, the FAA assumes that: (1) Because part 135 operators will not complete training for two years, no expected benefits will result after the first year and, at most, only one-half of the potential benefits will be achieved in the second year (full benefits will be achieved in the remaining years); and (2) the rule will not eliminate all pilot error accidents but will, at best, only reduce the part 135 pilot-error accident rate down to the rate sustained by part 121 operators. However, the FAA does not expect this rule to completely eliminate the differential in the pilot-error accident rate because the higher part 135 accident rate could be caused by factors other than pilot training; less pilot experience might also result in a higher pilot-error accident rate for part 135 operations.

The FAA estimated the value of potential benefits by multiplying the average value of a part 135 pilot-error related accident ($9.607 million) by the number of potential accidents (accident rate times projected flights). The value of potential benefits was then adjusted to equal the part 121 pilot-error accident rate. The pilot-error accident rate for part 121 airplanes was determined by conducting a search of the part 121 accident database. The FAA determined that this database contained 38 accidents in which pilot error was the probable cause. Given that part 121 airplanes flew 61.55 million flights during this period, the pilot-error accident rate is estimated to be 0.6174 accidents per million flights. By subtracting the part 121 accident rate from the part 135 accident rate [(1.1775 − 0.6174)=.5601], the available reduction in the part 135 accident rate is estimated to equal .56 accidents per one million flights.

Over the ten-year period, the estimated value of the benefits of this provision is about $196 million. When current practice is taken into consideration (30 percent of relevant pilots are already trained under part 121 under an RAA exemption), the ten-year, benefit of this provision is estimated to be $111 million.

Part 135 Crew Resource Management Training

During the period 1984 through 1993, crew coordination was a probable cause in 9 accidents involving part 135 aircraft affected by this rule. The 9 accidents were responsible for 45 fatalities and 7 serious injuries. During this period, commuter operators flew 25.5 million flights resulting in a commuter accident rate due to crew coordination problems of 0.3529 accidents per million

commuter flights. The average value of avoiding such an accident was estimated to be about $15.3 million. This estimated accident cost is considerably higher than the estimated accident cost used in the part 135 training upgrade benefit section. The difference results, in part, from the size of the samples. Thirty accidents were attributable to pilot error and only nine to crew coordination. The three high-cost accidents associated with crew coordination drive up the average cost of those accidents.

Initial training will begin in 1996 and continue through 1997. Therefore, the FAA assumes that full benefits cannot be achieved by this rule until 1998. The FAA estimates the value of benefits by multiplying the average value of a part 135 CRM-related accident ($15.3 million) by the number of potential accidents (accident rate times projected number of flights). Over the ten year period, the benefits of this provision are estimated at $163 million (discounted). However, the FAA expects to realize only some of these benefits by imposing this requirement.

Part 121 Crew Resource Management Training

During the period 1984 through 1993, crew coordination was a probable cause in 17 accidents involving part 121 aircraft. These 17 accidents resulted in 181 fatalities, 45 serious injuries, and 130 minor injuries. During this period, air carriers flew 61.55 million flights resulting in an air carrier accident rate due to crew coordination problems of 0.2762 accidents per million flights.

About two-thirds of the part 121 pilots will receive training during the first year and the remaining one-third of the pilots will complete the initial CRM training by the end of the second year. Thus, the FAA expects reduced benefits for the first two years. The annual, maximum potential benefits cannot be realized until 1998. The FAA estimates the maximum potential value of benefits by multiplying the average value of a part 121 CRM-related accident ($34.4 million) by the number of potential accidents (accident rate times flights).

Over the ten-year period, the estimated value of the benefits of this provision is about $305 million (discounted). Once again, the FAA expects to realize only some of these benefits by this proposed requirement.

Total Benefits

Benefits of this rule are estimated to total $579 million. The largest share of benefits, about $305 million, is attributed to part 121 CRM training. Part 135 CRM training and upgraded pilot training will account for about $163 million and $111 million, respectively.

Cost-Benefit Comparison

The FAA estimates that this rule will cost approximately $253 million over 10 years. The benefits are estimated to be $579 million. With respect to the part 135 flight crew training upgrade, the discounted training costs will be about $17 million, and the discounted value of the expected benefits is $111 million. With respect to part 135 CRM training, the discounted training costs will be about $6 million, and the discounted value of the expected benefits is $163 million. With respect to part 121 CRM training, the discounted training costs will be about $230 million, and the discounted value of the expected benefits is $305 million.

The estimated total cost of the rule has decreased significantly since the NPRM was published. Changes in assumptions—based on additional information about industry practice—were primarily responsible for the adjustments. The final analysis takes into consideration, for example, that 35 percent of part 121 pilots are already receiving and will continue to receive CRM training under AQP. It also takes into account that 30 percent of the part 135 pilots—those employed by dual-certificated operators—already train under part 121. Based on current information, the FAA has also adjusted its assumptions about new-hire rates and the costs of travel and instruction associated with training. In total, these adjustments lead to a lower estimated incremental cost of this rule.

To be cost beneficial, this rule does not have to be 100 percent effective in preventing the types of accidents that it is designed to prevent, nor does the FAA claim that these requirements will prevent all of the accidents for which this rule was designed. If the part 135 training upgrade is only 16 percent effective at preventing these accidents, then the benefits of this requirement will exceed the costs. CRM training for part 135 flight crews needs to be only 4 percent effective for the benefits to exceed the cost of that requirement. However, CRM training for part 121 flight crews needs to be over 75 percent effective for this requirement to be cost-beneficial.

The requirements for upgrading part 135 pilot training should be considered complementary to the proposed Commuter Rule (while the two CRM requirements are independent of the Commuter Rule). The goal of both the Commuter Rule and the part 135 training upgrade requirement is to reduce the accident rate of scheduled carriers operating 10-to-30-seat airplanes under part 135 to the existing part 121 accident rate. The benefits of the part 135 training upgrade requirement are part of the benefits estimated for the Commuter Rule, and they cannot be separated from that rule because it is not possible to determine which rule would have prevented a given accident. For example, individual accidents may be prevented by any one of several factors, such as prevention of the occurrence of a problem with an airplane in the first place, by providing more or better crew training to properly respond to the problem after it occurs, or providing a dispatcher to help identify a problem before it becomes a potential accident. For this reason, the FAA has chosen to combine the estimated costs of upgrading part 135 pilot training with the cost of the Commuter Rule and compare these combined costs with the estimated benefits of the Commuter Rule. When the estimated cost of the part 135 pilot training upgrade requirement ($17 million) is added to the estimated costs for the Commuter NPRM ($275 million), the combined costs ($292 million) are still less than the estimated benefits of the Commuter NPRM ($393 million). The estimated costs and benefits will probably be different in the Commuter Final Rule, but the estimated cost of the Commuter Final Rule plus the $17 million for the part 135 pilot training upgrade requirement is still expected to be less than the estimated benefits for the Commuter Final Rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by the Government regulations. The RFA requires agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.''

The rule will affect those small entities regulated by parts 121 and 135. The FAA's criterion (for documentation, see 47 FR 32825, July 29, 1982) for ''a substantial number'' is a number that is not less than 11 and which is more than one-third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, 9 or fewer aircraft. The relevant FAA criteria for ''a significant impact'' are incremental cost of $67,800 per year for a scheduled air carrier with a fleet size of 60 seats or fewer, and $121,300 for a scheduled air carrier with a fleet size of more than 60 seats). (All monetary values are in 1994 dollars).

Final Regulatory Determination

The FAA identified 39 part 121 operators who operate 9 or fewer aircraft. In addition, the FAA identified another 9 operators who are split certificate holders and operate under both parts 121 and 135. For this analysis the FAA determined that the split certificate holders are currently operating under the higher level of safety required under the part 121 requirements. The FAA determined that, on average, the crew on these aircraft consist of one pilot-in-command, one second-in-command, and three flight attendants. Also, these operators will likely employ two crews per airplane. The FAA determined that in the first year (1996) two PICs, two SICs, and six flight attendants will receive initial training. In the next three years (1997–1999), these crewmembers will receive recurrent training. In the fifth year (2000), there will be a turnover in the crew: 1 PIC, 1 SIC, and 2 flight attendants will be replaced by new employees who will need initial training. Over the following three years (2001–2003), all crewmembers will receive recurrent training. The next year (2004), there will again be a turnover in employees. And, in the final year (2005), the crewmembers will receive recurrent training. The discounted cost over the ten-year period for the part 121 requirements will be about $15,800 per aircraft, or about $2,250 annualized. An operator owning nine airplanes will incur an annualized cost of about $20,252. Thus, a part 121 operator will be able to own at least nine aircraft and remain below the annualized cost threshold of $67,800 for small scheduled operators. The FAA has also determined that part 121 CRM training costs will not impose a significant burden on a substantial number of large scheduled part 121 operators which have a higher threshold of $110,100.

The FAA identified twenty part 135 scheduled operators that own 9 or fewer aircraft (which require two pilots or have 10 or more passenger seats). The discounted cost for part 135 flight crew upgrade and CRM training will be about $53,332, or about $7,593 annualized. Of this amount, CRM training accounts for about $15,362 discounted, or about $2,187 annualized, and flight crew upgrade training accounts for $37,970 discounted, or about $5,406 annualized. This estimate is based on an average of two crews per aircraft with each crew consisting of a PIC, a SIC, and two flight attendants. This estimate includes initial training and recurrent training over the ten year period. Training costs for large scheduled part 135 operators with 9 airplanes (9×$7,593=$68,337) will not exceed the threshold for these operators ($121,300). However, training costs for small scheduled part 135 operators with more than 8 aircraft will exceed the threshold cost (8×$7,593=$60,744). FAA data show that only one of the 20 affected small part 135 operators operate nine aircraft. As this number is less than 11, it does not meet the definition of a ''substantial number.'' Therefore, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small part 135 operators.

International Trade Impact Statement

The FAA has determined that this rule will not constitute barriers to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

These regulations do 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 various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule was approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35; there are no changes associated with the paperwork burden of this rule. Therefore, the burden associated with this rule stands cleared under OMB control number 2120–0591.

Conclusion

For the reasons set forth under the heading ''Regulatory Analysis,'' the FAA has determined that this regulation: (1) Is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings ''Trade Impact Statement'' and ''Regulatory Flexibility Determination,'' the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drug testing, Narcotics, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Reporting and recordkeeping requirements, Safety.

The Amendment

The Federal Aviation Administration amends parts 121 and 135 of the Federal Aviation Regulations [14 CFR parts 121 and 135] as follows:

PART 121—CERTIFICATION AND OPERATIONS; DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

2. Section 121.135(b)(15) is revised to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(15) Each training program curriculum required by § 121.403.

* * * * *

3. Section 121.404 is revised to read as follows:

§ 121.404 Compliance dates: Crew and dispatcher resource management training.

After March 19, 1998, no certificate holder may use a person as a flight crewmember, and after March 19, 1999, no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

4. Section 121.405 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 121.405 Training program and revision: Initial and final approval.

* * * * *

(f) Each certificate holder described in § 135.3 (b) and (c) of this chapter must include the material required by

§ 121.403 in the manual required by § 135.21 of this chapter.

(g) The Administrator may grant a deviation to certificate holders described in § 135.3 (b) and (c) of this chapter to allow reduced programmed hours of ground training required by § 121.419 if it is found that a reduction is warranted based on the certificate holder's operations and the complexity of the make, model, and series of the aircraft used.

5. Section 121.406 is added as follows:

§ 121.406 Reduction of CRM/DRM programmed hours based on credit for previous CRM/DRM training.

(a) For flightcrew members, the Administrator may credit CRM training received before March 19, 1998 toward all or part of the initial ground CRM training required by § 121.419.

(b) For flight attendants, the Administrator may credit CRM training received before March 19, 1999 toward all or part of the initial ground CRM training required by § 121.421.

(c) For aircraft dispatchers, the Administrator may credit CRM training received before March 19, 1999 toward all or part of the initial ground CRM training required by § 121.422.

(d) In granting credit for initial ground CRM or DRM training, the Administrator considers training aids, devices, methods, and procedures used by the certificate holder in a voluntary CRM or DRM program or in an AQP program that effectively meets the quality of an approved CRM or DRM initial ground training program under section 121.419, 121.421, or 121.422 as appropriate.

6. Section 121.419 is amended by revising paragraph (a)(1)(vii), redesignating paragraph (a)(1)(viii) as paragraph (a)(1)(ix), and adding a new paragraph (a)(1)(viii), to read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(1) * * *

(viii) Visual cues prior to and during descent below DH or MDA;

(viii) Approved crew resource management initial training; and

* * * * *

7. Section 121.421 (a)(1) is revised to read as follows:

§ 121.421 Flight attendants: Initial and transition ground training.

(a) * * *

(1) General subjects—

(i) The authority of the pilot in command;

(ii) Passenger handling, including the procedures to be followed in the case of deranged persons or other persons whose conduct might jeopardize safety; and

(iii) Approved crew resource management initial training.

* * * * *

8. Section 121.422 is amended by revising paragraphs (a)(1)(vii) and (a)(1)(viii), and by adding a new paragraph (a)(1)(ix) to read as follows:

§ 121.422 Aircraft dispatchers: Initial and transition ground training.

(a) * * *

(1) * * *

(vii) Prevailing weather phenomena and the available sources of weather information;

(viii) Air traffic control and instrument approach procedures; and

(ix) Approved dispatcher resource management (DRM) initial training.

* * * * *

9. Section 121.427 is amended by adding a new paragraph (b)(4):

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(4) Approved recurrent CRM training. For flight crewmembers, this training or portions thereof may be accomplished during an approved simulator line operational flight training (LOFT) session. The recurrent CRM training requirement does not apply until a person has completed the applicable initial CRM training required by §§ 121.419, 121.421, or 121.422.

* * * * *

10. Section 121.431(a) is revised to read as follows:

§ 121.431 Applicability.

(a) This subpart prescribes crewmember qualifications for all certificate holders except where otherwise specified. The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more. The Administrator may authorize any other certificate holder that conducts operations under part 135 to comply with the training and qualification requirements of this subpart instead of subparts E, G, and H of part 135 of this chapter, except that these certificate holders may choose to comply with the operating experience requirements of § 135.244 of this chapter, instead of the requirements of § 121.434.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

12. Section 135.3 is revised to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

(a) Each person operating an aircraft in operations under this part shall—

(1) While operating inside the United States, comply with the applicable rules of this chapter; and

(2) While operating outside the United States, comply with Annex 2, Rules of the Air, to the Convention on International Civil Aviation or the regulations of any foreign country, whichever applies, and with any rules of parts 61 and 91 of this chapter and this part that are more restrictive than that Annex or those regulations and that can be complied with without violating that Annex or those regulations. Annex 2 is incorporated by reference in § 91.703(b) of this chapter.

(b) After March 19, 1997, each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, shall comply with subparts N and O of part 121 instead of the requirements of subparts E, G, and H of this part. Each affected certificate holder must submit to the Administrator and obtain approval of a transition plan (containing a calendar of events) for moving from its present part 135 training, checking, testing, and qualification requirements to the requirements of part 121 of this chapter. Each transition plan must be submitted by March 19, 1996, and must contain details on how the certificate holder plans to be in compliance with subparts N and O of part 121 on or before March 19, 1997.

(c) If authorized by the Administrator upon application, each certificate holder that conducts operations under this part to which paragraph (b) of this section does not apply, may comply with the applicable sections of subparts N and O of part 121 instead of the requirements of subparts E, G, and H of this part, except that those authorized certificate

holders may choose to comply with the operating experience requirements of § 135.244, instead of the requirements of § 121.434 of this chapter.

13. Section 135.12 is added:

§ 135.12 Previously trained crewmembers.

A certificate holder may use a crewmember who received the certificate holder's training in accordance with subparts E, G, and H of this part before March 19, 1997 without complying with initial training and qualification requirements of subparts N and O of part 121 of this chapter. The crewmember must comply with the applicable recurrent training requirements of part 121 of this chapter.

§ 135.241 [Amended]

14. Section 135.241 is amended by revising ''This'' to read ''Except as provided in § 135.3, this''.

§ 135.291 [Amended]

15. Section 135.291 is amended by revising ''This'' to read ''Except as provided in § 135.3, this''.

§ 135.321 [Amended]

16. Section 135.321 is amended by revising ''This'' to read ''Except as provided in § 135.3, this''.

Issued in Washington, DC on December 8, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–30449 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135

[Docket No. 28081; Notice No. 95–18]

RIN 2120–AF63

Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The proposal results from public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data contained in recent National Aeronautics and Space Administration (NASA) studies relating to flight crewmember duty periods, flight times, and rest. The proposal would update the regulations and replace certain out-dated regulations with a simplified regulatory approach based upon scientific studies of fatigue. The objective of the proposal is to contribute to an improved aviation safety system by ensuring that flight crewmembers are provided with the opportunity to obtain sufficient rest to perform their routine and emergency safety duties.

DATES: Comments must be received on or before March 19, 1996.

ADDRESSES: Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. 28081, 800 Independence Avenue, SW, Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28081. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Room 829, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism- or energy-related impact of the adoption of this proposal. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. 28081.'' When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

The aviation industry requires 24-hour activities to meet operational demands. Growth in global long-haul, regional, overnight cargo, and short-haul domestic operations is likely to increase round-the-clock requirements. Flight crews must be available to support 24-hour a day operations to meet these industry demands. Both domestic and international aviation frequently require crossing multiple time zones. Therefore, shift work, night work, irregular work schedules, unpredictable work schedules, and time zone changes will continue to be commonplace components of the aviation industry. These factors affect human physiology by causing performance-impairing fatigue that can affect the level of safety. The FAA believes that it is critical, whenever possible, to incorporate scientific information on fatigue and human sleep physiology into regulations on flight crew scheduling. Such scientific information can help to maintain the safety margin and promote optimum crew performance and alertness during flight operations.

Over the past 40 years, scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, sleepiness/alertness, and performance decrements has grown significantly. Some of this scientific knowledge, gained through field and simulator studies, has confirmed that aviators experience performance-impairing fatigue from sleep loss resulting from current flight and duty practices. Incorporation of scientific knowledge on fatigue into operations (e.g., regulatory scheduling considerations, personal strategies, fatigue countermeasures) would greatly benefit safety. A primary purpose of this rulemaking is to incorporate as much as possible of the scientific knowledge into the applicable regulations.

A second purpose of this proposed rulemaking is to establish consistent and clear duty period limitations, flight time limitations, and rest requirements for all types of operations. The current regulations require revising because of their complexity and age. While domestic flight time limitations and some commuter limitations were updated in 1985, flag and supplemental operations were not. With advancements in new aircraft, these operational distinctions are no longer as meaningful as they once were. This proposal would establish the same duty period limitations, flight time limitations, and rest requirements for all types of operations in part 121 for domestic, flag, and supplemental operations and in part 135 for commuter and on-demand operations. The duty period limitations, flight time limitations, and rest requirements would allow for differences based on the length of flights and number of flight crewmembers on a flight.

General Discussion

Historical Review

The Civil Aeronautics Act of 1938 (52 Stat. 1007; as amended by 62 Stat. 1216, 49 U.S.C. 551) and subsequently, the Federal Aviation Act of 1958 (now codified at 49 U.S.C. 40101 et seq.) addressed the issue of regulating flight crewmember hours of service. The Federal Aviation Act, as amended, empowers and directs the Secretary of Transportation to promote the safety of civil air flight in air commerce by prescribing and revising from time to time ''reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees.''

Despite many changes in the airline transportation industry over the 30 years before 1983, the rules governing flight time limitations and rest requirements remained virtually unchanged because no safety reasons had been presented which necessitated changes to the regulations. But the presumed level of safety established by these rules did not necessarily mean that the rules were as effective as they should have been when considered in light of changes that had occurred in the industry in the previous 30 years.

In 1983, a significant rulemaking was initiated to clarify and simplify the regulations and to make them more applicable to the air transportation environment at that time. A significant driving force for amending the flight time regulations in 1983 was that the requirements under part 121 were so complicated that they had required thousands of pages of interpretation and had sometimes been incorrectly followed by air carriers.

A second significant factor justifying amendment of the rules in 1983 was their inflexibility. For example, although under the then existing rule, air carriers were not considered in violation of the rules if flight times were exceeded due to adverse weather conditions or other circumstances beyond the control of the air carrier, an air carrier did not have the flexibility to adjust scheduled rest periods in the event of late arrivals or other factors. If a flight was late, the subsequent flights often had to be delayed while substitute flight crewmembers were brought in or while the flight crewmembers received their scheduled rest periods.

A third factor affecting the pre-1983 rules was, under deregulation of the air transportation industry, the number and variety of domestic certificate holders dramatically increased. The complexity and variety of the newer operations required that the FAA provide clear and simple minimum safety criteria for all operators.

A fourth factor affecting the pre-1983 rules, and one related to the changing character of the air transportation industry, was the growth of commuter operations. Some commuter operations fall under part 121 domestic rules while others fall under part 135 rules. A question existed as to whether either set of requirements effectively covered these comparatively new and growing operations. Thus an additional aim of the 1983–1985 rulemaking proceedings was to study the materials submitted by the commuter industry group and incorporate the findings into the applicable rules in order to provide, in this segment of the industry, a level of safety equivalent to other air transportation operations.

The 1983–1985 rulemaking proceeding was not the FAA's first attempt to solve the previously described problems. For a number of years before 1983 the FAA recognized that the flight time limits and rest requirements needed to be clarified and substantively improved in those areas where they were potentially inadequate. On several occasions the FAA had attempted to correct the flight time limitation problems of both parts 121 and 135 through rulemaking actions. But because of the complexity of the flight time rules and the economic interests affected, none of the previous proposals succeeded in resolving the problems to the satisfaction of the affected parties. Given the importance of the flight time rules in air transportation safety, the FAA decided in 1983 to try an innovative approach that would bring the affected parties together to negotiate a resolution.

1983–1985 Regulatory Negotiation

In 1983 regulatory negotiation was a new concept recommended by the Administrative Conference of the United States. Basically, it was a procedure by which representatives of all interests affected by a rulemaking could be brought together to fully discuss the issues under conditions conducive to narrowing or eliminating differences and to negotiating a proposed rule acceptable to each interest. In accordance with the recommended procedure, the FAA created an advisory committee chartered under the Federal Advisory Committee Act. The committee was comprised of persons representing the diverse interests affected by the flight time rules, including persons representing flight crewmembers, air carriers, air taxis, helicopter operators, and the public.

The committee met for 16 days in 1983 under the direction of a convener/mediator and thoroughly discussed the major issues involved in the regulation of flight time limits and rest requirements for domestic operations under part 121 and for operations under part 135. Although the committee did not reach consensus on any particular proposal, its deliberations were successful in narrowing the differences among parties and in reaching substantial agreement on some issues. In addition, the committee identified major areas of concern and all parties obtained significant, new information on a subject which had been discussed, without resolution, for years. The committee deliberations led to a notice of proposed rulemaking [49 FR 12136, March 28, 1984] and then to a final rule [50 FR 29306, July 18, 1985]. The final rule reflected comments received from the organizations represented on the Advisory Committee and from others. The final rule accomplished the following major objectives:

(1) It resolved a series-of-flights problem in part 121, domestic air carrier rules, thereby addressing many interpretation issues;

(2) It established a new rest period requirement in part 121, domestic air carrier rules, for flight crewmembers scheduled to fly 8 hours or less in 24 consecutive hours and allowed greater scheduling flexibility, including the introduction of a reduced rest period;

(3) It upgraded the requirements for all operations in part 135, particularly scheduled operations; and

(4) It incorporated into the rules certain exemptions that had wide applicability: The reduction of a 10-hour rest under part 135 under certain conditions; the extension of flight time with augmented crews; and the special limitations needed for helicopter medical emergency services.

ARAC Flight/Duty Working Group

While the FAA's 1983–1985 flight time limitations rulemaking was a step forward in dealing with rest and flight time issues, the rulemaking was limited in its scope and did not address either flag or supplemental operations under part 121. The FAA recognized at the time that flag and supplemental rules would need to be updated because these rules contained some of the same language and problems contained in the domestic rules that were amended. Furthermore, though the 1985 rulemaking clarified some of the flight time and rest requirements, it did not resolve the problems completely. Also, since the 1985 rulemaking, the complexity of the rules and

inconsistencies associated with various types of operations (domestic, flag, and supplemental under part 121 and commuter and on-demand under part 135) have continued to make application and interpretation burdensome. A number of petitions to amend the various sections were received (discussed in more detail later), as well as hundreds of letters concerning the interpretation of rest requirements for flight crewmembers assigned to a reserve status. Therefore, on June 15, 1992, the FAA announced [57 FR 26685] the establishment of the Flight Crewmember Flight/Duty Rest requirements working group (ARAC Flight/Duty Working Group) of the Aviation Rulemaking Advisory Committee (ARAC).

The ARAC had been established by the FAA in January 1991 [46 FR 2190, January 22, 1991] as a vehicle for convening representatives of interested groups to assist the FAA in addressing regulatory problems in a forum that could use, in a less formal setting, many of the regulatory negotiation techniques that had been used by the 1983–1985 flight time limitations advisory committee. The working group's task was to determine whether regulations pertaining to air carrier flight duty and rest requirements are consistently interpreted and understood by the FAA, air carriers, and pilots; to evaluate industry compliance/practice regarding scheduling of reserve duty and rest periods; and to evaluate reports of excessive pilot fatigue as a result of such scheduling. The working group was to develop recommendations for advisory material and a regulatory revision as appropriate.

Between its creation on June 15, 1992, and June 30, 1994, the ARAC Flight/Duty Working Group met on numerous occasions. The chairman of this working group (Dr. Donald E. Hudson of the Aviation Medicine Advisory Service) submitted a preliminary report on February 1, 1994, and a final report on June 30, 1994. The report indicated that while the working group did not reach a consensus on the specific issues, the working group did agree on four major areas that the FAA should address in future rulemaking actions: Absence of a duty time limitation; reserve scheduling; back-side-of-the-clock operations; and scheduled reduced rest. Each of the four areas is briefly described here. Three areas are specifically addressed in this rulemaking and one, back-side-of-the-clock operations, is partially, though indirectly, addressed.

Continuous or indefinite duty could occur under the current rules if flight crewmembers complete their daily schedule when delays encountered are beyond the control of the certificate holder, no matter how long it extends their duty period. The reserve scheduling issue concerns questions such as, do the same rest period requirements apply to flight crewmembers assigned to reserve duty as the rest period requirements that apply to flight crewmembers assigned to scheduled flights? Back-side-of-the clock operations refers to the question whether special duty limitations and rest requirements should be developed for operations that are scheduled during a flight crewmember's normal sleep cycle. The scheduled reduced rest issue concerns whether certificate holders should be allowed to schedule reduced rest in advance or whether reduced rest should only be allowed to deal with unavoidable delays.

Because no consensus could be reached, Dr. Hudson's final report included proposals submitted by several members of the working group. It also stated that there is enough clear scientific guidance available to assist the FAA in establishing a regulatory ''safety floor'' that will both address the identified issues and not unfairly penalize carriers economically. The report further stated that there is not any physiological justification for having different work rules for part 121 and 135 operators.

NASA Research Program

In 1980, in response to a Congressional request, the National Aeronautic and Space Administration (NASA) Ames Research Center created a Fatigue/Jet Lag Program to examine whether there are safety problems due to transmeridian flying and fatigue in association with various factors found in air transport operations. Since its inception, the program has pursued the following three goals: (1) to determine the extent of fatigue, sleep loss, and circadian disruption in both domestic and international flight operations; (2) to determine the impact of these factors on flight crew performance; and (3) to develop and evaluate countermeasures to reduce the adverse effects of these factors and improve flight crew performance and alertness. In 1991, the NASA Ames Program was renamed the NASA Ames Fatigue Countermeasures Program to highlight the increased focus on the third goal. Since the beginning of the program, NASA has worked in close cooperation with the FAA and with the airline industry to collect data and to provide the findings of its extensive research as quickly as possible. This research is fundamental to this proposal.

NASA Technical Memoranda reveal general principles pertinent to scheduling flight crewmembers. The memoranda include but are not limited to the following:

1. Crew Factors in Flight Operations II: Psychophysiological Responses to Shorthaul Air Transport Operations. (NASA Technical Memorandum 108856, November 1994)

2. Crew Factors in Flight Operations: Factors Influencing Sleep Timing and Subjective Sleep Quality in Commercial Long-Haul Operations. (NASA Technical Memorandum 103852, December 1991)

3. Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation. (NASA Technical Memorandum, 1995)

Copies of these memoranda have been placed in the public docket for this rulemaking.

These memoranda state that sleep, awake time off, and recovery are primary considerations for maintaining alertness and performance levels. Adequate sleep is essential to maintain alertness and performance, a positive mood, and overall health and well-being. Each individual has a basic sleep requirement. The average sleep requirement is for 8 hours in a 24-hour period. Losing as little as 2 hours of sleep in a 24-hour time period can result in acute sleep loss, which will promote fatigue and degrade subsequent performance and alertness. Over days, sleep loss will accrue into a cumulative sleep debt which can only be reversed by sleep. An individual who has obtained required sleep performs better even after long hours awake or during altered work schedules. An individual who is fatigued typically shows a decline in performance by requiring more time to complete a given task. Two nights of an individual's usual sleep requirement will typically stabilize the sleep pattern and restore acceptable levels of waking alertness and performance. More frequent recovery periods reduce cumulative fatigue more effectively than less frequent ones. For example, weekly recovery periods afford a higher likelihood of relieving acute fatigue than monthly recovery periods. Consequently, regulations that ensure minimum days off per week are critical for minimizing the effects of cumulative fatigue over longer periods of time.

The NASA findings and recommendations have been summarized in a 1995 NASA Technical Memorandum titled ''Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation.''

This is the first document that NASA intends to publish. This first document is intended to be concise, focused on operational considerations and to provide specific scientific input to this complex issue. The second document will provide the specific scientific references that support the principles and guidelines outlined in the first document. The second document will be longer and will focus on the scientific considerations related to these issues. NASA has assured the FAA that the Technical Reports presently in the docket contain the data on which the results and conclusions in both the first and second document are based. While not every NASA finding or recommendation is specifically reflected in this proposal, the overall thrust of this proposal is consistent with those findings and recommendations. Specific findings of the 1995 NASA memorandum are discussed and where relevant referenced by paragraph number in the discussion of specific proposals in this document.

National Transportation Safety Board Recommendations (NTSB)

Issues of fatigue in transportation have been of special concern to the NTSB in all modes of transportation. In 1989, the NTSB made three recommendations to the Department of Transportation (DOT) to encourage an aggressive Federal program to address the problems of fatigue and sleep issues in transportation safety:

Expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety. (I–89–1)

Develop and disseminate educational material for transportation industry personnel and management regarding shift work; scheduled work and rest; and proper regimens of health, diet, and rest. (I–89–2)

Review and upgrade regulations governing hours of service for all modes to ensure that they are consistent and that they incorporate the results of the latest research on fatigue and sleep issues. (I–89–3)

Further NTSB recommendations were issued as a result of the August 18, 1993, Douglas DC–8–61 freighter crash at the Leeward Point Airfield at the U.S. Naval Air Station, Guantanamo Bay, Cuba after the captain lost control of the airplane on approach. The airplane was destroyed by impact forces and a post accident fire, and the three flight crewmembers sustained serious injuries. NTSB determined that among the probable causes of this accident were impaired judgment, impaired decision-making, and impaired flying abilities of the captain and flightcrew due to the effects of fatigue.

In the letter accompanying the NTSB Safety Recommendations issued as a result of the accident, the NTSB cited the fact that FAA's flight and duty rules applicable to part 121 and 135 certificate holders, as interpreted, allow flight crewmembers to conduct flights under part 91, e.g., ferry flights for their certificate holders following the completion of flights conducted under part 121 or 135, without having to count these flight hours or duty time toward the part 121 or 135 flight time duty time limitations and rest requirements. The NTSB concluded that ''the accident trip was under the provisions of a combination of separate regulations that allowed extended flight and duty times to be scheduled, contrary to safe operating practices.'' The NTSB went on to note that the United States and France are the only countries in the world that base their aviation hours of service regulations on flight time, while most other countries base them on duty time or a combination of duty and flight time.

As a result of the Guantanamo Bay accident, the NTSB issued the following Safety Recommendations that relate to flight and duty time limits:

(1) Revise part 121 to require that flight time accumulated in noncommercial ''tail end'' ferry flights conducted under part 91, as a result of 14 CFR, part 121, revenue flights, be included in the flight crewmember's total flight and duty time accrued during those revenue operations. (A–94–105)

(2) Expedite the review and upgrade of flight/duty time limitations of the Federal Aviation Regulations to ensure that they incorporate the results of the latest research on fatigue and sleep issues. (A–94–106)

The NTSB also reiterated an earlier recommendation that the FAA require U.S. air carriers operating under 14 CFR part 121, to include, as part of pilot training, a program to educate pilots about the detrimental effects of fatigue, and strategies for avoiding fatigue and countering its effects. (A–94–5)

Aviation Safety Reporting System

The FAA has recently examined incident reports submitted by pilots to NASA's Aviation Safety Reporting System. Since January 1, 1986, NASA has received several reports of situations resulting from fatigue from pilots engaged in part 121 operations and 200 reports from pilots conducting part 135 operations. Although these incidents did not actually result in accidents, they were of a sufficiently serious nature that pilots took the trouble to file a report with NASA with the hope of gaining the attention of the regulatory authorities.

Petitions for Rulemaking

The FAA has received several petitions for rulemaking on flight, duty, and rest requirements:

On June 1, 1989, the Air Transport Association of America (ATA) petitioned the FAA to amend part 121, Subpart R of the FAR (which contains the flight time limitations for flag operations). This petition primarily addressed the need for rulemaking to address the industry wide technological airplane changes that have taken place since these rules were promulgated, such as airplanes that require only two pilots on long distance flights and significant improvements in cockpit automation and noise reduction. Specifically, the petition requested that two-pilot flight crews be allowed to fly 12 hours between required rest periods.

On June 22, 1990, the Air Line Pilots Association (ALPA) petitioned the FAA to amend §§ 121.471 and 135.265 to delete the reduced rest provisions and to increase the required minimum rest for flight crewmembers who are scheduled to fly fewer than 8 hours in a 24-hour period to 10 hours with at least 8 hours in a rest facility; propose longer rest for flight crewmembers who are scheduled to fly more than 8 hours or who make more than eight landings in a 24-hour period; limit duty period time to 14 consecutive hours in a 24-hour period; mandate 1 calendar day free of duty every 7 days, even when flight crewmembers are assigned reserve and/or training duties; and restrict air carriers from interrupting a flight crewmember's rest by communicating with him or her during a required rest period.

On September 12, 1990, the Regional Airline Pilot Association (RAPA) petitioned to amend § 135.265 of the FAR to delete the reduced rest provisions for flight crewmembers who are scheduled to fly in pressurized aircraft during a 24-hour period and increase the minimum rest period to 10 hours with at least 9 hours in a rest facility. For those crewmembers scheduled to fly in unpressurized aircraft, and those who make more than seven landings in a 24-hour period, RAPA petitioned to require a 12-hour rest with at least 10 hours in a rest facility. RAPA petitioned also for an amendment to § 135.265(a) of the FAR which would reduce the total flight time allowed per year to 1,000 hours and per month to 100 hours.

On November 25, 1991, Mr. Thomas T. Gasta, a captain on turbo-jet aircraft, petitioned the FAA to amend the definitions in part 1 of the FAR to include a definition of rest that would ensure that a rest period is free from restraint and free from responsibility for work. Mr. Gasta's particular concern is to ensure that reserve time is not considered rest.

The FAA has considered each of these petitions for rulemaking in preparing this NPRM.

Commuter Rulemaking

The FAA has issued a proposed rulemaking that would affect commuter operations, in general, including applicable flight time limitations and rest requirements (Notice 95–5, 60 FR 16230; March 29, 1995).

The effect of Notice 95–5, if adopted, would be to apply the part 121 domestic flight time limitations and rest requirements to certain commuter operations within the United States and the part 121 flag flight time limitations and rest requirements to certain commuter operations to or from the United States. Thus, that proposal would eliminate the present differences between part 121 and part 135 flight time limitations and rest requirements for affected commuter operations. For all of the reasons discussed in this preamble, the FAA has decided to propose one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation (domestic, flag, supplemental, commuter and on-demand operations). Since, if adopted, this proposal would eliminate all of the present differences between parts 121 and 135 in this subject area, it overrides the related proposal and discussion in Notice 95–5. Nonetheless, in any final rule action based on this proposal, the FAA will consider, where relevant, any comments relating to flight time limitations and rest requirements submitted in response to Notice 95–5.

If the commuter rulemaking is issued as a final rule, the compliance date for the flight time limitations and rest requirements of that rule will be coordinated with the effective date of any final rule that may be issued as a result of this NPRM, so that certificate holders conducting commuter operations will have to change their procedures for scheduling duty periods, flight time, and rest only once.

The Proposal

General

This proposal is a preventive measure designed to address the potential safety problems associated with fatigue-based performance decrements. This proposal is not a response to specific accidents, but rather to extensive data which shows a relationship between fatigue and a decrement in performance. This proposed measure would place limitations on flight crewmember hours of service by requiring certain scheduling limitations and minimum rest periods.

The proposed rule would simplify existing flight crewmember flight time limitations and rest requirements by replacing existing Subparts Q, R, and S of part 121 with a new Subpart Q and revising most of subpart F of part 135. Subpart Q of part 121 would not differentiate between domestic, flag, and supplemental operations as current regulations do, and subpart F of part 135 would not differentiate between commuter and on-demand operations.

As stated previously, the proposed regulatory limitations for parts 121 and 135 are based in part on knowledge of effects of fatigue as reflected in the scientific studies done by NASA. These proposed amendments would be compatible with air carrier operations and would provide reasonable, basic limitations that are conducive to safety.

The FAA considered a number of options prior to proposing those outlined in this notice. The proposal in this notice takes a combined approach based on duty period limitations, flight time scheduling limitations, daily and weekly rest requirements, and requirements for augmented flight crews. Since the studies concerning fatigue in flight operations could not determine any fatigue based rationale for differentiating between types of operations, a single proposed set of scheduling limitations was selected for all types of operations. The proposal is designed to provide science based parameters for duty limitations and rest requirements and, at the same time, be understandable to everyone involved in flight operations. The proposal would establish a basic scheduling limitation for two pilot flight crews of 14 hours of scheduled duty, 10 hours of scheduled flight time, and 10 hours of scheduled rest. Certificate holders would have additional flexibility under the proposal to increase the length of scheduled duty periods, but only under certain conditions. The proposed scheduled maximum 14 hour duty period, 10 hours of scheduled flight time, and 10 hour rest period are consistent with the NASA ''Principles and Guidelines'' (Specific Principles, Guidelines, and Recommendations 2.2.3 and 2.1.2, hereafter referred to as ''Recommendations'') for 2-pilot crews.

Although not a proposal in this notice, the FAA also requests that commenters provide scientific data concerning the amount of flight time that two pilot flightcrews should be allowed to fly in a 14-hour duty period, particularly on long range international flights that infringe on the flight crewmember's window of circadian low (2 a.m. to 6 a.m. at the crewmember's home base time).

Applicability

Proposed §§ 121.471 and 135.261 state the applicability of these amendments. Subpart Q in part 121 would provide duty period limitations, flight time limitations, and rest requirements for flight crewmembers in domestic, flag, and supplemental operations. Subpart F in part 135 would provide duty period limitations, flight time limitations, and rest requirements for commuter and on-demand operations.

The proposed duty period limitations, flight time limitations, and rest requirements would also be applicable to duty periods and flight time performed for a certificate holder conducting part 91 operations, as specified in proposed §§ 121.1, 121.487, 135.1, and 135.275.

Terms and Definitions

Proposed §§ 121.471 and 135.261 contain a list of terms and definitions applicable to the proposed amendments.

The proposal defines ''approved sleeping quarters'' to mean an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator. See Advisory Circular 121–31, ''Flightcrew Sleeping Quarters and Rest Facilities'' for guidance on methods obtaining FAA approval for aircraft used in part 121 and 135 operations. Sleeping quarters that are already in use that have been determined to be adequate by the Administrator, such as bunks or other horizontal surfaces, will not need to be reapproved because of this proposed rule. The FAA recognizes that there is a difference between the term ''adequate'' sleeping quarters and ''approved'' sleeping quarters. Approved sleeping quarters could include additional possibilities that were not part of ''adequate sleeping quarters'' as previously interpreted. For example, formerly passenger seats were never considered adequate for use as sleeping quarters. Recently, however, a

new type of passenger seat has been developed that meets the guidelines in AC 121–31 and therefore could be approved for use as sleeping quarters by certificate holders operating under part 121 or part 135.

The proposed rule defines four kinds of time: assigned time, duty involving flight time (referred to as ''duty period''), reserve time, and rest (referred to as ''rest period''). Definitions of each of these times, as well as other terms, as proposed in §§ 121.471 and135.261, are discussed below.

''Assigned time'' is time when the flight crewmember is assigned by the certificate holder to activities other than flight duties. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks and any other assignments, excluding reserve time and required rest periods. Assigned time may be performed as part of a duty period, in which case the proposed duty period limitations and rest requirements in §§ 121.473, 121.475, and 135.263 would apply. Rest requirements associated with assigned time that is not part of a duty period are found in proposed §§ 121.483(f) and 135.271(f).

The proposed rule defines ''duty period'' as the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base.

The proposed rule defines two types of reserve: ''Reserve time'' and ''standby duty.'' ''Reserve time'' is defined as a period of time when a flight crewmember must be available to report upon notice for a duty period. The certificate holder must allow the flight crewmember a minimum of 1 hour or more to report. Reserve time is not considered part of a rest period and is not considered a duty period. Reserve time does not include activities defined as assigned time. Reserve time ends when the crewmember reports for a duty period, when the crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest period.

''Standby duty'' in the proposed rule must be treated just like any other duty period associated with flight. Standby reserve duty is any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g., airport, crew lounge) designated by a certificate holder.

The proposed rule defines ''rest period'' as the time period free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. Rest periods are considered personal time. Rest periods are provided to give the flight crewmember a predetermined opportunity for rest.

For example, if a flight crewmember is scheduled for a duty period which ends on 1200 on Tuesday and requires 14 hours of rest and the flight crewmember is not scheduled for another duty period until 1200 on Thursday, then the 48 hours between duty periods is considered a rest period. The flight crewmember's minimum rest period requirements would be satisfied after 14 hours from the time the duty period ended. The air carrier may reschedule the flight crewmember, but must ensure the minimum rest period requirements are satisfied. It should be noted that the crewmember cannot be required by the air carrier to contact the air carrier, answer the phone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a scheduled rest period. This does not prohibit the flight crewmember from contacting the air carrier at his or her own discretion.

For clarification purposes, the proposal also defines a ''calendar day'' as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight. The definition is needed because certificate holders have been confused about the application of the term. ''Calendar day'' is defined in the proposed rule in a manner consistent with past interpretations of the rule.

Also, for clarification purposes, the proposal defines ''operational delays'' as delays that are beyond the control of the certificate holder such as those that would be caused by weather, aircraft equipment malfunctions, and air traffic control delays. It would not include late arriving passengers, late food service, late fuel trucks, or delays in loading baggage, freight, or mail, or similar events.

Flight Crewmember Duty, Flight, and Rest

Proposed §§ 121.473, 121.475, and 135.263 would establish maximum scheduled duty periods and a maximum scheduled amount of flight time for flight crewmembers within the maximum scheduled duty period. In addition, the proposal would establish minimum rest requirements for flight crewmembers, including requirements that apply when flight crews are augmented and when on board rest facilities are provided.

Current rules are primarily based on flight time. In addition, in some cases the current rules are based on actual rather than scheduled flight time. The major basis for the proposed rule is scheduled duty. The reason for going to a scheduled duty rule is that it is more consistent with current studies relating to fatigue.

For the purposes of assignments involving flight time, the duty period includes the total elapsed time between when the flight crewmember reports for a flight assignment, as required by the air carrier, and when the flight crewmember is relieved from duty by the air carrier. A typical duty period for a flight crewmember would consist of pre-flight duties and post-flight duties assigned by the air carrier. Pre-flight safety duties include aircraft emergency equipment checks, flight planning/dispatch related duties, and complying with the certificate holder's approved operations manual.

At least one industry study and information obtained from crewmembers indicates that air carriers vary in how early they require flight crewmembers to check in to begin their duty periods and pre-flight duties. This check-in or report time varies depending on the type of equipment flown and the flight destination. Carriers typically require flight crewmembers to arrive 30 minutes to 1 hour before scheduled departure. For international flights some carriers require flight crewmembers to report for duty up to 2 hours before departure.

Post-flight safety duties include the post-landing duties, safe deplaning of passengers, duties related to securing the aircraft, and administrative responsibilities such as reporting inoperative equipment to maintenance personnel. Typically, flight crewmembers are required to remain on duty after the aircraft arrives at the gate to accomplish these post-flight duties before they are relieved from duty.

A duty period may also include activities defined as ''assigned time,'' as discussed under ''Terms and Definitions,'' above.

Thus, a flight crewmember's duty period is not solely a function of whether the aircraft is airborne. Flight crewmembers perform important safety duties during boarding and deplaning. This proposal, therefore, is based on duty periods that include flight time

rather than solely on flight time. The FAA expects certificate holders to establish realistic report and release times to allow flight crewmembers sufficient time to complete these essential pre-flight and post-flight safety activities.

Proposed §§ 121.473 and 135.263 would provide for different duty period limits based on the number of pilots assigned. Each duty period would have a scheduled flight time limit and would be followed by a required rest period. NASA (Recommendation 2.3.6) recognizes that the use of additional flight crewmembers justifies longer duty periods if the flight crewmembers are provided on-duty sleep opportunities.

To allow flexibility a scheduled duty period could be extended two hours if the extension is needed because of operational delays. Rest periods may be reduced by up to one hour only if the reduction is needed because of operational delays and then only if the pilot has not exceeded the pilot's scheduled maximum duty-period limitations. If a rest period is reduced, the next rest period would have to be extended.

Table 1 provides a summary of the proposed limitations on duty periods and flight time and the proposed rest requirements for pilots.

For one- and two-pilot crews. In proposed § 135.263(b), the basic duty period scheduling limitation for a one-pilot crew would be 14 hours, including no more than 8 scheduled hours of flight time. In proposed §§ 121.473(b) and 135.263(c), the basic duty period limitations for a two-pilot crew would be 14 hours, including no more than 10 scheduled hours of flight time. The minimum rest period for one- and two-pilot crews would be 10 hours. The proposed 10-hour limit on scheduled flight time and the proposed 10-hour minimum rest are consistent with NASA Recommendations 2.3.3 and 2.1.1, respectively.

These proposed duty periods for one- and two-pilot crews could be extended to 16 hours due to operational delays. The rest periods may be reduced to 9 hours if the actual duty period is not more than 14 hours and if the reduction is needed due to operational delays. If the rest period is reduced the next rest period would have to be a minimum of 11 hours. A duty period extended due to operational delays may involve longer than scheduled flight time.

TABLE 1.—PILOT DUTY PERIOD, FLIGHT TIME AND REST REQUIREMENTS

No. of pilots	Duty period hours	Flight time hours	Minimum rest hours	Reduced rest hours [1]	Rest hours following reduced rest (compensatory)	Extended duty period hours [2]
1 (part 135)	No more than 14	No more than 8	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
2	No more than 14	No more than 10	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
3	No more than 16	No more than 12	14	12, May only be reduced if duty period has not exceeded 16.	16	Up to 18 only if due to operational delays
3 Each pilot must have sleep opportunity and approved sleeping quarters must be available.	More than 16, but no more than 18.	No more than 16	18	16, May only be reduced if duty period has not exceeded 18.	20	Up to 20 only if due to operational delays
4 Each pilot must have sleep opportunity ad approved sleeping quarters must be available [3].	More than 18 but no more than 24.	No more than 18	22	20, May only be reduced if duty period has not exceeded 24.	24	Up to 26 only if due to operational delays

[1] Rest periods may be reduced only when the actual duty period does not exceed the maximum scheduled duty period for that crew composition and if the pilot is provided a compensatory rest period. This compensatory rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period.

[2] The flights to which the pilot is assigned must at block out time be expected to reach their destination within the extended duty period.

[3] Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous states and DC.

Longer Duty Period for a 3-Pilot Crew. Under proposed §§ 121.473(c) and 135.263(d), the certificate holder may schedule up to a 16-hour duty period with up to 12 hours of flight time if 3 pilots are assigned to the flight. The required rest would be 14 hours. This duty period could be extended to 18 hours due to operational delays. The required rest could be reduced to 12 hours if the actual duty period is not more than 16 hours. If the rest is reduced the next rest would have to be 16 hours.

Longer duty period for three-pilot flightcrews with approved sleeping quarters. Under proposed §§ 121.473(d) and 135.263(e), if three pilots are assigned and if approved sleeping quarters are provided, the scheduled duty period can be up to 18 hours with a scheduled flight time limit of 16 hours. The required rest would be 18 scheduled hours. Each pilot must be given an opportunity to rest in approved sleeping quarters. The duty period could be extended to 20 hours due to operational delays. The rest could be reduced to 16 hours if the actual duty period is not more than 18 hours. If the rest is reduced, the next rest would have to be 20 hours.

Longer duty period if outside the U.S., four pilots, and approved sleeping quarters. Under proposed §§ 121.473(e) and 135.263(f), if the duty period involves one or more flights outside the 48 contiguous states, if four pilots are assigned, and if approved sleeping quarters are provided, the scheduled duty period can be up to 24 hours with 18 hours of scheduled flight time. Each

pilot must be given an opportunity to rest in flight in approved sleeping quarters. The required scheduled rest following the duty period would be 22 hours. The duty period could be extended to 26 hours due to operational delays. The rest could be reduced to 20 hours if the duty period is not greater than 24 hours. If the rest is reduced, the next rest would have to be 24 hours.

Reporting for a duty period. The effect of the proposal is that if a flight crewmember reports for duty, including standby duty, as required and finds that the flight assignment was incorrectly scheduled or that the flight is delayed or canceled, a duty period nevertheless would have begun. For example, a flight crewmember may report for duty as scheduled, only to find that the assigned report time is incorrect and that duty actually begins 2 hours later. The carrier could either keep the flight crewmember on duty or release the flight crewmember for a complete rest period under the applicable section of this proposed rule. While the rule language does not spell out in detail this kind of example, or application, this is how the concept of duty period would work.

Extension of duty periods. The intent of this proposed rule is to ensure that flight crewmembers are provided adequate opportunity to rest through properly scheduled duty periods, flight times, and rest. Regular delays on certain routes or deviations from certain schedules would indicate that the schedules need to be adjusted to comply with the proposed limitations. The proposal acknowledges that certain delays, such as adverse weather, cannot be anticipated. A flight crewmember would not be considered to be scheduled for flight time or a duty period in excess of flight time or duty period limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to operational delays (such as adverse weather conditions, equipment malfunctions, and air traffic control) are not at block out time expected to reach their destination within the scheduled time. Operational delays do not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight, or mail, or similar events. (See proposed §§ 121.473, 121.475, 121.479, 135.263, 135.267.)

The FAA is proposing limiting the extension of any scheduled duty period due to operational delays to no more than 2 hours. If at any time during a duty period it is determined that, due to operational delays, a scheduled flight will not terminate within the scheduled termination of that duty period plus 2 hours, then the flight crewmembers must be relieved of duty before initiating that flight segment. They may be scheduled for another flight as long as that flight is scheduled to terminate within the original scheduled duty period limitations plus two hours. The FAA believes that 2 hours provides flexibility in the event of operational delays and also limits the possibility of flight crewmembers being on a continuous duty period even when the duty period is extended due to circumstances beyond the control of the certificate holder. The limit on flight time hours is discussed elsewhere in this preamble.

Certificate holders would be expected to recognize when certain schedules need adjustment due to regularly experienced or seasonal delays.

Augmented Flight Crews

The longer scheduled duty periods that would be allowed under proposed § 121.473 (c), (d), and (e) and § 135.263 (c), (d), and (e) are contingent upon the assignment of additional pilots in order to maintain safety by distributing the workload and permitting more rest. This will ensure that pilots are alert and can contribute to safe operations. It is important to note that if a pilot is scheduled for a duty period longer than 14 hours, the appropriate number of additional pilots would have to be present on every flight segment within that duty period. In practical terms, the FAA expects that this would occur on larger aircraft and, generally, long-haul operations with relatively few flight segments. This result would be consistent with the intent of the proposal and consistent with current industry practice.

It should be noted, however, that if a flight crew with additional, non-required pilots is assigned a duty period of 14 hours or less, the certificate holder may follow § 121.473(b) or § 135.263(b), (i.e., provide a rest period of 10 hours).

Proposed §§ 121.473 (d) and (e) would require opportunities for flightcrew members to rest and availability of approved sleeping quarters for duty periods of more than 16 hours. The provision for additional flight crewmembers and for on board sleeping quarters takes into account the extended time flight crewmembers may be on duty to complete long range flight segments. Existing rules, (§§ 121.483, 121.485, 121.507, 121.509, 121.521, 121.523) require augmented flightcrews for longer duty periods.

Existing rules in some cases, under present § 121.523(c), allow a scheduled duty period of 30 hours; however, the FAA believes that 24 hours should be the limit of any scheduled duty period.

This proposal does not provide for substituting flight engineers for pilots. Rather the augmentation of pilots must take place regardless of the number of flight engineers assigned.

Reduction of the rest period. In order to provide additional flexibility, the FAA is proposing to allow the reduction of rest due to operational delays. The rest period may be reduced only if the maximum scheduled duty period limitation has not been exceeded or extended. Table 1 provides information on reduced rest periods followed by compensatory rest periods.

Flight Engineers

Proposed § 121.475 would provide similar requirements for flight engineers. Table 2 provides a summary of the proposed limitations on duty periods and flight time and the proposed rest requirements for pilots and flight engineers. Present part 121 rules for domestic operations do not contain separate flight time limitation requirements for flight engineers. The flag and supplemental operations rules (§§ 121.493 and 121.511) deal with flight engineers by referencing other sections within the applicable subpart. To avoid any possible confusion as to which flight time limitation rules apply to flight engineers, the FAA proposes in § 121.475 to address flight engineers separately.

TABLE 2.—FLIGHT ENGINEER DUTY PERIOD, FLIGHT TIME AND REST REQUIREMENTS

No. of flight engineers	Duty period hours	Flight time hours	Minimum rest hours	Reduced rest hours (1)	Rest hours following reduced rest (compensatory)	Extended duty period hours 2
1	No more than 14.	No more than 10.	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
1	No more than 16.	No more than 12.	14	12, May only be reduced if duty period has not exceeded 16.	16	Up to 18 only if due to operational delays
2 Each flight engineer must have sleep opportunity and approved sleeping quarters must be available.	More than 16, but no more than 20.	No more than 16.	18	16, May only be reduced if duty period has not exceeded 18.	20	Up to 20 only if due to operational delays
2 Each flight engineer must have sleep opportunity and approved sleeping quarters must be available.	More than 18 but no more than 24 3.	No more than 18.	22	20, May only be reduced if duty period has not exceeded 24.	24	Up to 26 only if due to operational delays

1 Rest periods may be reduced only when the actual duty period does not exceed the maximum scheduled duty period for that crew composition and if the flight engineer is provided a compensatory rest period. This compensatory rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period.

2 The flights to which the flight engineer is assigned must at block out time be expected to reach their destination within the extended duty period.

3 Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous States and DC.

Reserve and Standby Assignments

Current regulations do not specifically cover the issue of reserve time and standby duty. Within the air transportation industry two types of generic reserve assignments have developed. One type, usually referred to as ''standby reserve,'' is essentially the same as a duty period, and as discussed below would be treated as duty for duty period limitation and rest requirement purposes. The other type, here called ''reserve time'' is not considered part of a rest period and is not considered part of a duty period and therefore would be dealt with separately under this proposal. Proposed §§ 121.477 and 135.265 provide reserve assignment requirements.

Under the proposal a standby duty period must be scheduled in accordance with proposed §§ 121.473, 121.475, or 135.263. A standby duty ends when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

Standby duty periods are assigned because the air carrier believes that some time within that period the flight crewmember will be needed for a flight assignment and must report for flight assignment within less than 1 hour of being notified. Standby duty also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g., airport, crew lounge) designated by a certificate holder. Usually flight crewmembers are assigned to standby duty at the airport. In addition, since the industry has indicated that they treat standby as duty, this proposed definition should not impose any additional burdens on certificate holders. It is because of the momentary anticipation of a flight assignment, which prevents a pilot from planning for adequate rest, that standby assignments are treated as duty periods.

The proposed standby duty period would be treated as a duty period that is associated with flight, regardless of whether the flight crewmember is ever assigned to flight time during that standby duty period or not. Standby duty periods would be scheduled in accordance with proposed duty period limitations, flight time limitations, and rest requirements. A standby duty period commences when the flight crewmember is placed on standby duty and ends when the flight crewmember is relieved of duty, whether that duty is standby or flight. Following standby duty, the flight crewmember must be scheduled for and must receive the same amount of rest as he or she would receive if he or she accumulated flight time, even if there is no actual flight time.

Reserve time is a period of time when a flight crewmember is not on duty but nonetheless must be available to report upon notice for a duty period. During reserve time a flight crewmember typically goes about his or her off duty routine, obtaining rest as needed during each 24 hour period. Reserve time is not considered part of a rest period, is not considered part of a duty period, and is not considered assigned time. Reserve time ends when the crewmember is released, the crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the crewmember reports for a duty period. The certificate holder must allow the flight crewmember a minimum of 1 hour to report.

Often flight crewmembers are on reserve for days at a time and are given 10 or more hours notification prior to a duty period assignment. However, there are times when a flight crewmember is given fewer than 10 hours notification and may not be completely rested. Some flight crewmembers arise early in the morning and may have been awake for many hours at the time they receive notification of an evening flight. These flight crewmembers may not have an opportunity for a complete rest period before the flight assignment. The same may be true of a flight crewmember who does not awaken until the middle of the afternoon and receives fewer than 10 hours notification of a duty period which starts after midnight.

Since it is difficult to predict when an individual flight crewmember sleeps and when he or she awakens, no attempt has been made in the proposal to correlate the amount of notice a flight crewmember should receive with the time of day. Rather, the emphasis is placed on the flight crewmember's receiving enough notice to provide an

opportunity for rest before the duty period assignment. If a flight crewmember receives at least 10 hours notice there would be enough time for the flight crewmember to be fully rested before reporting for a duty period of 14 hours. However, under proposed §§ 121.477(b) and 135.265(b), when flight crewmembers receive fewer than 10 hours notice for a duty period assignment, there is a reduction in the length of that duty period. While it could be possible for a flight crewmember to receive 10 hours rest before being placed on reserve and then given 10 hours of notification in order to serve a 14-hour duty period, the FAA believes that efficient crew scheduling will minimize the possibility of this happening. Table 3 shows for each proposed amount of notification time the proposed corresponding duty period limitation.

Proposed §§ 121.477(b)(2) and 135.265(b)(2) would provide another option under which a flight crewmember could be given a minimum 6-hour period of protected time for each 24 hours of reserve time. During this 6-hour period of protected time the certificate holder would not be able to contact the flight crewmember or assign the flight crewmember to any duty. The 6-hour period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18-hour reserve time, exclusive of the 6 hours of protected time. The length of the duty period and the subsequent rest period must be in accordance with §§ 121.473, 121.475, or 135.263. The FAA believes that this option would allow flexibility for the certificate holder while giving the flight crewmember sufficient certainty to plan for and obtain adequate rest. While the 6 hours of protected time must be the same 6 hours for any reserve assignment, it could be a different 6 hours for subsequent reserve assignments (e.g., a subsequent reserve assignment following duty or assigned time).

Under either reserve time assignment option, the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment.

Although NASA recommends a predictable and protected 8-hour sleep opportunity (2.6.2), the FAA believes that the above described options are practical and in most instances will provide at least an 8-hour rest opportunity. Either the flight crewmember is provided an opportunity for a full 10-hour rest period or, in the case of a short notice, the flight crewmember's duty period is limited, or the flight crewmember is able to plan each day with the certain knowledge there will be a minimum 6-hour period for undisturbed rest. Thus, these options would protect against excess fatigue without eliminating the objective of the reserve system and without placing a significant economic burden on the industry.

There have been a number of complaints stating that in some cases pilots were unable to obtain enough rest because they were given a reserve assignment immediately following a duty period and then were called for duty before they had received an adequate rest. While under these proposed rules such a practice would be a violation because of the requirement for a minimum rest period between duty periods, the FAA has included in proposed §§ 121.477(b) and 135.265(b) a requirement that a flight crewmember must be given a 10-hour rest period before beginning a reserve time assignment. Sections 121.483(c) and 135.271(c) state that required rest periods can occur concurrently so this proposed requirement may not require an additional rest period.

The FAA believes that both of these methods of handling reserve time assignments would provide more flexibility, would be less costly for certificate holders, and would be more likely to ensure adequate rest than the current rules. Under the lookback provision in the current rules, for instance, a flight crewmember on reserve could not take a flight assignment unless he or she had a scheduled rest period in the previous 24 hours. There have been situations in which certificate holders have professed experiencing difficulties in implementing rest requirements for flight crewmembers on reserve. Recognizing this, the FAA has developed this proposal. However, if this proposal on reserve time assignments is not issued as a final rule, the FAA intends to ensure that the current rule, as interpreted, is being correctly implemented.

Other Proposals on Reserve Time Presented During ARAC Discussions

Southwest Airlines proposed a system under which the total of reserve time and ''time engaged in scheduled air transportation'' could not exceed 18 hours (16 hours if this period included any time during the hours between 0300 and 0459). In addition, Southwest proposed that reserve time between 0001 and 1000 not be included if the air carrier did not contact the crewmember during that period. One option presented by the Air Line Pilots Association is similar to Southwest's proposal. ALPA would not allow reserve time and duty time to exceed 16 hours. A 14-hour maximum would apply when the duty time is not contained with the period between 0500 and 0259.

The FAA has several concerns about this approach. First, we believe it will be difficult to understand and to apply consistently. More importantly, although it appears to provide for some reductions in duty time, depending on the time of day a crewmember is notified of a flight assignment, it does not expressly provide for any dedicated rest opportunity. Moreover, it is not clear exactly what would be encompassed by Southwest's term ''time engaged in scheduled air transportation.'' The FAA requests that commenters supporting this approach provide additional details about this alternative and operational scenarios on how it would be applied. Commenters should provide information on how this alternative does or does not provide the flexibility of the options proposed in this NPRM, and how this alternative provides an equivalent level of safety to the options proposed here.

The International Brotherhood of Teamsters proposed two alternatives for reserve duty. The first alternative proposes that a crewmember could be assigned a reserve period of 24 consecutive hours if the crewmember is given 11 hours or more advance notification for a flight assignment. The second alternative would allow a crewmember to be assigned a reserve period of up to 12 consecutive hours if the crewmember is given less than 11 hours of advance notification. In this case, the total flight time and duty time could not exceed 17 hours. The FAA believes that both of these options unnecessarily limit the scheduling flexibility of the operator and that both would greatly increase operators' costs while providing no increase in safety when compared with the reserve options proposed in this NPRM.

The Air Transport Association would give the operator five alternatives for dealing with reserve time. (1) The carrier could give the employee at least eight consecutive hours of rest during any 24 hour period on reserve; (2) The carrier could give the crewember at least 10 hours of advance notice of any assignment, at which point the crewmember would be released on rest until the time to report; (3) The carrier could not assign the crewmember on

reserve to flights between midnight and 5 a.m.; (4) The carrier could assign the crewmember on reserve to no more than two flight segments; or (5) The carrier could establish alternative policies and procedures to ensure that a crewmember will not be assigned to a flight unless that crewmember is ''adequately rested for that flight assignment.''

The first three ATA proposals are generally similar to this NPRM. The NPRM contains the option of blocking out a protected period of at least six hours during which the crewmember could not be disturbed by the employer. This is less restrictive than ATA's proposal (1), although it involves a slightly longer period than would be provided by proposal (3). Like ATA's proposal (2), the NPRM would provide for advance notice of assgnments. However, the NPRM is not limited to a single cut-off of 10 hours' notice. Carriers would be permitted to assign crewmembers to duty periods that vary with the amount of advance notice, down to as little as 4 hours' notice. Since ATA's proposal number (4) does not address rest at all, it is not included in the NPRM. Proposal number (5) sets no minimum standards for rest, and it, too, is therefore not part of this NPRM.

The Air Line Pilots Association, in addition to the alternative described above, offered a proposal somewhat similar to that of ATA. ALPA's proposal appears intended to provide more stability for pilot rest periods; it would not permit carriers to move the eight hour rest period more than three hours in any 24-hour period. Similarly, ALPA proposed a six-hour protected period, comparable to the five-hour period proposed by ATA. Our comments on ATA's proposal apply to ALPA's as well, i.e., we believe we have accomodated much of their objectives.

Another proposal advanced during the ARAC discussions came from a labor/pilot group consisting mainly of Part 135 pilots. This proposal would limit any combination of reserve time and duty periods to no more than 18 hours or any duty assignment to no more than 14 hours. After being on reserve for 18 hours, a crewmember would have to receive a 10-hour rest period before accepting another reserve assignment. This proposal is not included in the NPRM because it unnecessarily limits the air carrier's reserve scheduling flexibility and provides no increase in safety when compared with the options proposed in the NPRM.

TABLE 3.—ADVANCE NOTIFICATION

No. of hours notification prior to report time	10 hours or more	8 or more hours but less than 10	6 or more hours but less than 8	4 or more hours but less than 6	Less than 4 hours
Maximum scheduled duty period.	Maximum scheduled duty period [1].	No more than 12 hours.	No more than 10 hours.	No more than 8 hours	No more than 6 hours.

[1] Maximum scheduled duty period could be 14, 16, 18, or 24 hours.

Additional Duty Period Limitations and Reduced Rest

Current §§ 121.471(g) and 135.263(d) state that a flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions) are not at block out time expected to reach their destination within the scheduled time. These requirements do not specify a limit to the flight time extensions under these circumstances.

In theory, under the current rule language, duty periods could be extended for unlimited periods of time as long as the extension was due to operational causes beyond the control of the air carrier such as weather, mechanical problems, and Air Traffic Control situations. This could result in flight crewmembers who, after the first flight of a flight schedule in a duty period, would be as much as 6 hours late, but would still continue with the flight schedule. The NASA Scientific Working Group determined that extended duty periods with no limit on the amount of time which the duty period could be extended was one of the major fatigue related problems with current flight crewmember assignments (Recommendations 1.4, 2.1.2, and 2.3.3). Therefore, the FAA has proposed to place a limit on the amount of time that a duty period may be extended regardless of the nature of the delay.

Proposed §§ 121.473, 121.475, and 135.263 would allow certificate holders an extension of a duty period of not more than 2 hours beyond the maximum scheduled duty period if the extension is due to operational delays not under the control of the certificate holder. The proposed requirements would also allow the reduction of the required rest if the flight crewmember has not exceeded the required duty period (without the extension), if the flight crewmember is provided with a longer subsequent rest period as specified, and if the reduction in rest is due to operational delays. Reduced rest periods may not be scheduled in advance.

Proposed §§ 121.479 (a) and (b) and 135.267 (a) and (b) would state that a flight crewmember is not considered to be scheduled for a duty period or flight time in excess of the duty period or flight time limitations if the duty period or flight times to which the flight crewmember is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled duty period or flight time.

In addition, proposed §§ 121.479(a) and 135.267(a) state that a flight crewmember may not serve as a crewmember in an aircraft if, at block out time for the purpose of flight, that flight crewmember's actual elapsed duty time plus duty time scheduled for the next flight will cause the flight crewmember to exceed the applicable duty period limitations by more than two hours. However, there is no limit on actual flight time accrued during a duty period, if the additional flight time is due to operational delays, but in any event the duty time limit may not be extended by more than 2 hours.

The proposal would allow a certificate holder the flexibility to schedule the same crew on a flight even when that flight is going to be late; however, it would not allow flight crewmembers to be scheduled indefinitely even when the circumstances which caused them to be late are beyond the control of the certificate holder. During a scheduled flight assignment, if the combination of scheduled times for the remaining flights would mean that the maximum scheduled duty period would be exceeded by more than two hours, the flight crewmember would have to be

rescheduled so that the remaining duty period to which he or she is assigned will not exceed the maximum scheduled duty period by more than two hours. This can be done by assigning a flight crewmember to a new flight schedule or by reassigning the original scheduled flights so the flight crewmember is relieved of duty before commencing the flight which would extend beyond the maximum scheduled duty period plus two hours.

Weekly and Monthly Flight Time Limitations

Proposed §§ 121.481 and 135.269 would provide limits on the amount of actual flight time which a flight crewmember can accrue in a calendar month and in any 7 consecutive calendar days. These proposed rules would replace current §§ 121.471(a), 121.481 (d), (e), and (f), 121.503 (d) and (e), 135.265(a) and 135.267(a). Although NASA states that there is insufficient scientific information to provide guidance in this area, these limits are proposed to counter any harmful effects of any possible cumulative fatigue.

In addition to the scheduled flight time limits which are integrated into the scheduled duty periods, weekly and monthly flight time limits are proposed as follows:

- Proposed §§ 121.481(a) and 135.269(a) would limit a flight crewmember to 32 flight hours in any 7 consecutive calendar days.
- Proposed §§ 121.481(b) and 135.269(b) would limit a flight crewmember to 100 flight hours in any calendar month.

In practice, this means that, before beginning to fly on any particular day, a flight crewmember's actual accrued flight time for the previous six days must be added to the flight time scheduled to be flown that day. If the result is fewer than 32 hours, the flight crewmember may begin and complete the day's scheduled flying even if delays (which are beyond the carrier's control) encountered during the day eventually cause the total time to exceed 32 hours. The same principle applies for the calendar month flight time limitation.

Current regulations place varying limits on the amount of time that a flight crewmember can serve. The variance is based on the type of operation. Flight crewmembers given flight assignments under part 121 for domestic operations (§ 121.471(a)) are limited to 30 flight hours in any 7 consecutive days. The 7 consecutive day limit for flag operations is 32 flight hours (§ 121.481(d)) and there is no 7 consecutive day limit for supplemental operations. Under § 135.265(a) in scheduled operations the amount of flight time which may be accrued in any 7 consecutive days is 34 hours and there is no 7 consecutive day limit for unscheduled operations. Sections 121.471(a) and 121.481(e) restrict flight crewmembers serving in domestic or flag operations conducted under part 121 to 100 hours in any calendar month and § 121.503(d) restricts flight crewmembers serving in supplemental operations to 100 flight hours in any 30 consecutive days. Section 121.521(c) allows certain flight crewmembers to accrue 120 hours in any 30 consecutive days. Section 135.265 allows flight crewmembers serving in part 135 scheduled operations to accumulate 120 flight hours in any calendar month.

In addition, § 121.471(a) restricts flight crewmembers engaged in domestic operations conducted under part 121 to 1000 hours in any calendar year. Section 135.265 allows flight crewmembers serving in part 135 scheduled operations to serve as crewmembers during flight for 1200 hours in any calendar year, while § 135.267 allows 1,400 flight hours in a calendar year for unscheduled operations. Sections 121.503, 121.521, 135.267, and 135.269 also provide other calendar quarter and 90 consecutive day limitations.

The proposed rule would establish a common 32 hour limitation in any 7 consecutive days, a 100 hour limitation in any calendar month, and would eliminate quarterly, 90 consecutive day and calendar year limitations.

The proposed rule does not provide a yearly flight time limitation because the monthly limit would effectively restrict flight time to 1200 hours in a calendar year. Although the NASA document recommends the annual flight time limitations be decreased a percentage of the monthly requirement, it also states that there is not enough scientific data to provide specific guidance in this area. The FAA believes that this proposal contains sufficient additional rest provisions (i.e. 36 hours in 7 days, 10 hour rest periods, and 48 hours for crossing multiple time zones). Because of the increase in rest requirements, the FAA believes that safety would not be adversely affected because of a lack of a yearly flight time limit which is less than the sum of all the monthly flight time limits. At the same time the lack of annual flight time limits will provide flexibility and the opportunity for increased productivity. In view of the fact that there is no scientific data to suggest a discrete yearly limit and the fact that the requirement for rest has been increased, the FAA believes the proposed rule will provide the appropriate level of safety.

The FAA believes that there is no longer justification for the different weekly, monthly, and annual flight time limitations for different types of operations and that proposing a single limitation standard provides adequate safeguard against the effects of cumulative fatigue, eliminates rules that do not have an adequate scientific rationale, and also simplifies the overall limitations. The FAA asks for comments from the public about the maximum number of hours a flight crewmember should be allowed to fly under this chapter. Further, the FAA asks for comments regarding the impact of this rule on seasonal flying.

Additional Rest Requirements

The proposed rule would continue some of the rest requirements which are contained in the existing regulations. Proposed §§ 121.483(a) and 135.271(a) would state that no certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest period required. Proposed §§ 121.483(b) and 135.271(b) would state that no duty could be assigned during any required rest period. This proposed requirement would preclude any carrier from assigning any type of duty, including nonflight assignments (such as training, assigned time, reserve time, standby duty, or ground duties), to any flightcrew member during a required rest period. These proposed requirements are the same as those in current § 121.471(c)(4) and (e) and § 135.263(a) and (b).

Proposed §§ 121.483(c) and 135.271(c) would be a new requirement to clarify that rest periods required under the subpart can occur concurrently with any other required rest period. For instance a required 10-hour rest could occur concurrently with the 36-hour rest required under proposed §§ 121.483(e) and 135.271(e). Further, under the proposal, if a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

Proposed §§ 121.483(d) and 135.271(d) would be a new requirement stating that a rest period required in §§ 121.473, 121.475, or 135.263 may be reduced only because of operational delays. The reductions may not be scheduled in advance.

Current §§ 121.471 and 135.265 require each domestic air carrier operating under part 121 and each

certificate holder in scheduled operations under part 135 to relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days. Proposed §§ 121.483(e) and 135.271(e) would require that each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time shall be provided a rest period of at least 36 consecutive hours during any 7 consecutive calendar days. The proposed 36-hour rest could be taken during a layover. Thirty-six hours of rest is the amount of time recommended by the NASA Scientific Working Group (2.1.3); further the FAA believes that flight crewmembers should be provided at least 36 consecutive hours rest during any 7 consecutive calendar days any time they are assigned to reserve regardless of the nature of the reserve. This allows flight crewmembers the time to plan for and obtain a thorough rest so that they are not fatigued if they receive a duty period assignment.

The Air Transport Association proposed, during the ARAC discussions, that this provision be applied over a period of 168 consecutive hours rather than 7 consecutive calendar days. We believe that it would be more difficult for crewmembers and carriers to maintain records in this fashion. However, commenters are invited to address this issue more fully in their comments. If adequate justification is shown for using 168 hours rather than 7 calendar days, the final rule may incorporate that proposal. Commenters should note that any change in this provision would likely require corresponding changes in the flight time limitations proposed in §§ 121.481 and 135.269.

Proposed §§ 121.483(f) and 135.271(f) would require certificate holders to provide each flight crewmember assigned to assigned time, as defined in proposed §§ 121.471 and 135.261, a minimum rest period of 10 hours before the commencement of a subsequent duty period. This rest period may occur concurrently with another required rest period. This proposed rest requirement is needed to address situations in which a flight crewmember is assigned to one of a group of activities that are neither rest nor part of an assignment involving flight time, but which could contribute to crewmember fatigue (e.g. training, deadhead transportation, etc.). The intent of this proposed rule is for flight crewmembers to have the opportunity to obtain sufficient rest in order to be able to perform assigned flight duties, regardless of whether the fatigue was caused by flight duties or by other activities for the certificate holder. However, certificate holders have the option of counting assigned time as part of a duty period and scheduling the appropriate rest period for that duty period or of counting assigned time exclusively as assigned time and ensuring that the flight crewmember is given 10 hours of rest before commencing a duty period. The 10 hours is consistent with the other required rest periods.

For example, a flight crewmember could be deadheaded to a new location at the beginning of a duty period and then begin a schedule flight assignment. In this case the deadhead transportation would be counted as part of the duty period. Alternatively, after completing a duty period, a flight crewmember could be deadheaded back to his or her home base before beginning the required rest period. In this case the deadhead transportation could be considered assigned time. Performing assigned time after the completion of a duty period would be permitted as long as the flight crewmember received the minimum rest required for that duty period or 10 hours, whichever is greater, before the next duty period.

Proposed §§ 121.483(g) and 135.271(g) would establish a requirement for a certificate holder to provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The accumulation of the 48 hours may be in one or more time zones but each of these time zones must be 6 or more hours from the flight crewmember's home base. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules. The present rules make no provisions for rest periods based on time zones. The NASA Scientific Working Group data and subjective comments from crewmembers indicate there is a need to recognize the additional fatigue effects of crossing time zones (2.1.4). The literature indicates that some flight crewmembers experience, at times, additional fatigue from crossing as few as two time zones; while others do not report the same fatigue until they have crossed many more time zones. The FAA recognizes the complicated problem of addressing each individual flight crewmembers circadian rhythm; nevertheless by establishing a minimum rest requirement at the home base for flight crewmembers who cross 6 or more time zones the FAA believes these flight crewmembers will be given an opportunity to once again establish what is for that flight crewmember the normal sleep awake cycle. The proposed rest requirement is a minimum requirement and is provided to give the flight crewmember an opportunity for rest. The flight crewmember should use this time to obtain the needed rest so that he or she will be rested when called upon for the next duty period. The FAA will issue advisory material based on scientific studies to assist air carriers and flight crewmembers in dealing with fatigue related issues.

Deadhead Transportation

Current §§ 121.471(f) and 135.263(c) specify that time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport to which he or she is to serve on a flight as a crewmember, or from an airport at which the flight crewmember was relieved from duty to return to his or her home base is not considered part of a rest period. This type of transportation is commonly called ''deadhead'' transportation. Proposed §§ 121.485 and 135.273 would be the same as the current requirement except that in addition it would specify that for duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

Other Flying for a Certificate Holder

Proposed §§ 121.487 and 135.275 establish duty period and flight time limitations for other flying for a certificate holder, including flying under part 91. Flight crewmembers and certificate holders must ensure that any duty periods and flight assignments assigned by the certificate holder are scheduled, assigned, and performed under the applicable requirements of parts 121 and 135 (14 CFR 121.473, 121.477, 121.479,121.481, 121.483, and 14 CFR 135.263, 135.265, 135.267, 135.269, and 135.271) even if the flight is not conducted under part 121 or 135. In addition, any flight crewmember who is employed by two or more air carriers or commercial operators must ensure that any duty periods and flight assignments are scheduled, assigned and performed under the applicable rules of parts 121 and 135. In other

words, when certificate holders assign flight crewmembers to conduct ferry flights, or other flights under part 91, this flight assignment is treated just as any other duty period involving flight.

This proposal is based on NTSB recommendation A–94–105, which was issued as a result of the Guantanamo Bay accident, discussed above under ''NTSB Recommendations'' and the FAA's belief that other flying for a certificate holder such as training flights for a 121 or 135 certificate holder may cause both short term and cumulative fatigue which may adversely effect that flight crewmember's flight duties performed under parts 121 and/or 135. This would include flying for more than one part 121 and/or 135 certificate holder.

Proposed Effective Date for Final Rule

The FAA is proposing an effective date of 60 days after these proposals are published as a final rule. By that date all certificate holders operating under part 121 or part 135 would have to begin scheduling all flight time duty periods and rest periods in accordance with the new requirements. However, as mentioned above under ''Commuter Rulemaking,'' the FAA intends to coordinate the effective date of this rulemaking with the compliance date of the commuter rulemaking, so that certificate holders conducting commuter operations will have to change their procedures for scheduling flight time, duty periods, and rest periods only once.

The FAA requests comments on the length of time needed between the issuance of the final rule and its effective date.

Regulatory Impact Analysis Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned interpretation that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 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 this Notice of Proposed Rulemaking (NPRM) would probably generate benefits and cost savings that are greater than its costs and is ''a significant regulatory action'' as defined in the Executive Order. The FAA also estimates that the NPRM would have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal would amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. Currently, these limitations and requirements differ across the various sectors of the industry (e.g., part 121, part 135). In addition, the FAA is required to consider alternatives to the proposed rule when the following circumstances are met:

—The regulatory action is designated as a ''significant regulatory action'' (as defined by Executive Order 12866), and

—The regulatory action is designated as having a significant impact on a substantial number of small businesses, nonprofit groups, or airports operated by small governmental jurisdictions.

The FAA has determined that the potential economic impacts of the proposed rule are sufficiently large that both of these criteria are satisfied. Accordingly, two alternatives will be discussed in the section entitled ''Analysis of Alternatives'' below.

Cost-Benefit Analysis

Proposal

As mentioned above, the main thrust of the proposal is to amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The proposal would establish a basic scheduling limitation for 2 pilot crews of 14 hours of scheduled duty and 10 hours of scheduled rest. The maximum length of duty periods permitted would increase as the number of pilots increases. The proposal would also revise limits on the amount of flight time which a flight crewmember can accrue in a duty period, in any 7 consecutive calendar days, and in a calendar month. The maximum duty period limits would be decreased in most cases for part 121 and part 135 operators, and the required length of rest periods would be increased. These changes are expected to impose unquantifiable costs on unscheduled part 135 operators.

Although the maximum length of duty periods would generally decrease under the proposal, the maximum allowable flight times for pilots operating 2-pilot aircraft (no flight engineer) would increase from 8 to 10 hours. This provision should create the potential for substantial cost savings for both part 121 and 135 operators.

The FAA determined that 2 provisions of the proposed rule could impose substantial quantifiable costs. Another provision could impose substantial costs on the commuter operators, but could not be quantified. The potential economic impacts on the air taxi operators of these provisions could not be quantified at this time. The most costly provision applies to the scheduling and duty assignments of reserve pilots. A reserve pilot must be available to report upon notice for a duty period with one hour or longer of notice. The proposal would require that the maximum length of a duty period be reduced in those cases when less than 10 hours of notice for a duty period assignment is received. The proposal would also provide another option under which a flight crewmember could be given a regularly scheduled minimum 6 hour protected time within each 24 hours of reserve time.

The other provision which would impose substantial quantifiable costs would require that ''ferry'' flight time used to reposition aircraft be counted the same as time accrued in part 121/135 revenue operations for the purpose of determining compliance with FAA limitations on duty periods and flight time limitations. Another provision that would increase the minimum required rest periods between flight duty periods might impose substantial costs on the commuter operators, but they cannot be quantified without additional data. The provisions pertaining to reserve pilot scheduling might also impose substantial costs on air taxi operators, but these costs could not be quantified.

Cost Analysis

As described in more detail in the Regulatory Impact Analysis, the FAA has relied heavily on surveys of a limited number of operators to develop its analysis. The FAA is interested in comments on the representativeness of the data used for extrapolation to the entire affected population. Where commenters believe these survey data do not reflect the circumstances/responses for operators generally, the FAA welcomes any and all relevant data supporting such claims.

The FAA also seeks comments on its methodology, assumptions, and/or data used to estimate the following:

(1) The efficiency gains from the increase in allowable flight time from 8 to 10 hours.

(2) The likely operator response to the reserve pilot requirements (i.e., the likelihood of operators choosing between canceling flights and adding pilots),

(3) The cost to operators and passengers of flight cancellations and of adding pilots, and

(4) The potential safety benefits from reduced fatigue.

Part 121 Air Carriers

The FAA estimated the economic impact of each provision of this proposed rule. Some of the provisions by themselves were estimated to entail substantial compliance costs, whereas others have the potential for affording substantial cost savings to operators.

The proposed rule is estimated to impose discounted costs of $842.03 million on part 121 operators over the next 15 years, but these costs are expected to be offset by the cost savings. The total potential discounted cost savings from increased productivity were estimated at $1.72 billion over this period. The net discounted compliance cost savings of the proposed rule would therefore amount to $877.90 million over this period. The cost savings would result if operators take advantage of opportunities afforded by the proposal to more efficiently schedule their existing workforce, which could enable them to reduce their plans for hiring new pilots by 3,348 pilots over the next 15 years.

Costs

The FAA determined that the primary cost of implementing the reserve pilot scheduling and duty time regulations would consist of the cost of reassigning some scheduled airline pilots or hiring new pilots to assure adequate coverage of flights that would otherwise have to be canceled or delayed. Other provisions of the proposal, however, may allow operators to use on-line pilots more intensively; therefore, the need for additional reserve pilots is likely to be satisfied by reassigning on-line pilots that would become available because of enhanced productivity. In addition, a relatively small number of flights might be canceled.

These cost estimates were based on the least cost combination of reserve pilot scheduling options for each operator based on the nature of its flight operations, such as the amount of advance notification provided reserve pilots and duty period durations. The FAA estimates that the part 121 scheduled operators would have to hire an additional 500 pilots, representing a 1% increase in their current pilot staffing level, thereby increasing their recurring annual salary costs by $41.29 million. In addition, the FAA estimated that the flight cancellations resulting from decreased flexibility in scheduling reserve pilots would impose societal costs (the value of delayed passenger time) amounting to $8.12 million per year. The total potential cost of the reserve pilot regulation was therefore estimated at $49.40 million annually after the first year the proposed rule were in effect for part 121 scheduled carriers. In the first year, this annual cost would be increased by $9.26 million to $58.66 million to capture initial training costs.

The FAA determined that the reserve pilot regulation would also impose substantial costs on part 121 unscheduled or ''supplemental'' air carriers. The economic impact on these air carriers is expected to be greater than for the scheduled part 121 carriers because of the less predictable nature of their operations, which doesn't allow them to give as much advance notification of flight assignments to their reserve pilots. The FAA estimated that approximately 330 additional pilots, representing about 4% of their present pilot staffing level, would need to be hired by these air carriers at a recurring annual cost of $24.02 million.

The FAA determined that the proposed restriction on ''ferry'' flights would have very little, if any, impact on scheduled part 121 operators. These proposed restrictions, however, could have a substantial economic impact on part 121 unscheduled operators, which are more likely than the scheduled operators to conduct these operations because of the greater distance between crew bases and destination points of their revenue flights. The FAA estimated that these operators would have to hire an additional 235 pilots (3% increase in current pilot staff) to avoid major disruptions in their flight schedules, entailing recurring annual costs amounting to $17.04 million.

The total recurring annual potential compliance costs (reserve pilot and ''ferry flight'' restrictions) for unscheduled or supplemental operators were therefore estimated at $41.06 million. The first year initial training costs for these unscheduled air carriers were estimated to add $10.10 million to annual costs in the first year.

In summary, the total first year annual compliance costs for all part 121 air carriers of the reserve pilot regulation and restriction on ferry flights were estimated at $110.28 million. Societal costs resulting from canceled flights were estimated to comprise $8.12 million of this total. These costs were estimated based on the time that passengers on canceled flight would be delayed, which the analysis assumes would be two hours. Total discounted costs were estimated at $842.46 million over the period from 1996–2010.

Cost Savings

The FAA expects that these costs would be more than offset by cost savings afforded the scheduled part 121 operators by the opportunity to more effectively utilize their flight crewmembers. The potential cost savings for the unscheduled part 121 air carriers, however, are not expected to be of a sufficient magnitude to outweigh the proportionally higher potential costs that were estimated for this sector of the industry. Under the proposal, both scheduled and unscheduled air carriers could increase the maximum permitted flight times within individual duty periods from 8 to 10 hours for 2-pilot crews.

The potential productivity gains from this provision should enable scheduled part 121 air carriers to maintain their current schedules with fewer pilots and transfer some pilots from active or nonreserve to reserve status. The decrease in the anticipated need for pilots among the scheduled air carriers is expected to substantially outweigh any potential increased need for pilots among the unscheduled air carriers. In other words, the overall need for pilots in future years should decrease because the positive economic effects resulting from increased productivity are expected to outweigh the negative economic impacts of the need for more reserve pilots.

Data collected by the FAA indicate that domestic air carriers do not fly their crewmembers close to the maximum permitted current limit of 100 hours per month. The average monthly flying time for the scheduled air carriers is 60 hours. The part 121 unscheduled operators tended to fly their crewmembers from 40–60 hours per month. In fact, most unionized air carriers are prevented by labor contracts from flying their crewmembers more than 75–80 hours per month.

If this proposed rule is adopted as an amendment, most air carriers would likely attempt to take advantage of the opportunity to utilize their crewmembers more effectively. The increase from 8 to 10 hours in the maximum permitted flight hours 2-pilot crews could fly within individual duty periods should provide an incentive for air carriers to increase the daily flight hours and hence monthly flight hours of their crews and decrease the amount of duty time which is not flight time. The FAA determined that air carriers would

most likely be able to increase utilization of their pilots by 4% on average (which would amount to an additional 2 flight hours per month per pilot in most cases).

Air carriers would realize these productivity gains only to the extent that their pilot salary costs would not increase. Such an assumption appears warranted for the following reasons. The FAA estimated that about 10% of the pilot salary cost of the major air carriers is for nonproductive time (i.e., time within a duty period that is not devoted to actually flying the airplane). Air carriers frequently pay pilots for this nonproductive time at a reduced hourly rate, as established by formulas in their contracts. The proposal would allow them to significantly reduce this nonproductive time by permitting an increase in maximum flight hours from 8 to 10 hours within a shorter duty period.

Many unionized part 121 air carriers would probably have to renegotiate their contracts in order to reduce the amount of nonproductive time for which they are currently paying. Renegotiation would not be required, however, in order to add about 2 hours on average to monthly pilot flying hours because actual flying hours are currently considerably lower than the maximum range of 75–80 hours under most contracts. In addition, the nonunionized air carriers would in theory have a greater potential for increasing flight hours flown by their crewmembers because their maximum limits on flight hours tend to be closer to the current regulatory maximums of 1,000 hours per year. Under the proposal, the maximum monthly flight time of 100 hours per month would effectively allow 1,200 hours of flight time per year, thereby affording them the potential of a 20% increase in productivity (nonunionized air carriers account for 16% of the operations flown by all part 121 air carriers). This analysis, however, only assumes a 4% increase in productivity.

The FAA estimated that a 4% overall productivity enhancement would afford part 121 carriers overall total cost savings amounting to $3.07 billion (present value, $1.72 billion) over the next 15 years. These estimates are based on an expected decrease of 3,348 new pilots hired over this period and an average loaded salary of $82,572 for part 121 scheduled and $72,600 for part 121 supplemental. In addition, initial training costs of $18,516 for part 121 scheduled pilot and $17,908 for part 121 supplemental pilot were used in this analysis as in the cost analysis.

This estimate should be regarded as an lower bound for potential cost savings arising from the increase in pilot productivity. Productivity cost savings above 4% are theoretically possible; however, due to any salary increases that unions may negotiate, the air carriers may not be able to achieve all of these savings. In any event, air carriers would have a greater opportunity to limit pay for nonproductive time under the proposal, as noted above, which currently amounts to a significant part of their total salary costs. The FAA does not have sufficient information to assess the interplay of these factors in determining pilot salaries and requests comments from the public on this issue.

Longer proposed flying hours would also allow air carriers to reduce the number of 3-pilot crews in favor of 2-pilot crews. The FAA estimates an additional savings of 200 pilots, with annual net cost savings which could amount to $20.40 million in the first year and $16.54 million in subsequent years. These potential cost savings were estimated at $119.62 million (discounted) over a 15-year period. Consequently, total cost savings of the proposed rule for part 121 air carriers is expected to amount to $3.32 billion (present value, $1.87 billion) over the next 15 years.

Part 135 Scheduled Air Carriers

The proposed rule is estimated to impose discounted quantifiable costs of $56.75 million on part 135 carriers over the next 15 years, but these costs could be offset by cost savings. The total potential cost savings of the proposed rule are expected to amount to $94.04 million over the next 15 years. The net cost savings, which would result from an expected net reduction of 353 new pilots hired over the next 15 years, could therefore amount to $50.68 million over this period. This conclusion is contingent on the assumption that these operators would be able to modify their flight schedules so as to avoid expenses associated with longer minimum rest periods without significantly affecting revenues.

Costs

The FAA estimated that the reserve pilot provisions of the proposal would result in the hiring of 152 additional pilots in order to avoid having to cancel flights because of inadequate reserve pilot resources. The increased annual cost for the industry was estimated at $6.12 million. In addition, these operators are expected to incur incremental initial training costs amounting to $1.06 million in the first year the proposed rule is in effect, increasing annual compliance costs to $7.18 million in that year. These costs would amount to a discounted $56.75 million over a 15-year period.

Cost Savings

Part 135 scheduled airlines would reap potential cost savings amounting to $145.04 million (present value, $84.76 million) over the next 15 years. Although these operators currently tend to utilize their pilots more intensively than the part 121 operators (i.e., 74–89 hours), they still utilize them well under the proposed regulatory maximum of 100 hours a month. The potential for a 4% increase in productivity would still remain. The fact that a considerably smaller portion of the part 135 pilot workforce is unionized would remove that possible constraint to increased productivity.

These potential cost savings are based on a projection that these operators would need 353 fewer pilots at an average annual loaded salary of $40,280 that was used in the analysis of costs. In addition, initial training costs of $6,948 per pilot would be saved.

Benefits

The FAA has promulgated flight time limitation rules that contain rest requirements for certain operations and weekly and monthly limits on the number of hours of flight time in an effort to protect flight crewmembers from work-related fatigue. The issue did not receive much publicity until May 1994, when the NTSB cited pilot fatigue as a probable cause in an accident when the captain lost control of a DC–8 freighter while approaching the U.S. Naval Station Airbase at Guantanomo Bay, Cuba in August 18, 1993. Prior to that time, this factor had never been cited by the NTSB as a probable cause in an accident involving part 135 or 121 operations.

In its investigation, the NTSB noted that the flight crew had been on duty about 18 hours and had flown about 9 hours at the time of the accident. Under the proposed rule, this flight would have been illegal because the maximum length of a duty period for a 3-person flight crew on an airplane lacking appropriate sleeping quarters is 16 hours. In addition, the company had intended to further extend this flight by having the crew ferry the airplane back to Atlanta after the plane had landed at Guantanamo Bay, which would have resulted in a total duty time of 24 hours. The NTSB report specifically noted that the flight crewmembers had experienced a disruption of circadian rhythms and sleep loss, which resulted in fatigue that had adversely affected

performance during the critical landing phase.

The National Aeronautic and Space Administration (NASA) Ames Research Center has been studying this issue since 1980 and has published a number of studies on it. These studies have established a relationship between long duty periods and fatigue and between fatigue and a deterioration in performance.

It is very difficult to quantify the potential safety benefits of this proposed rule because of the scarcity of accidents that have been attributable to pilot fatigue. The NTSB has not focused on this issue until quite recently in its accident investigations. The FAA believes that the investigation of the effects of fatigue on pilot performance should not be limited to a review of relevant accidents. A better understanding of this issue can be gained from examining incident reports submitted by pilots to the National Aeronautical and Space Administration's Aviation Safety Reporting System (ASRS). Since January 1, 1986, ASRS has received 21 reports of unsafe incidents resulting from fatigue by pilots engaged in part 121 operations and 200 reports from pilots conducting part 135 operations. Although these incidents did not actually result in accidents, they were of a sufficiently serious nature that pilots filed a report with NASA with the hope of gaining the attention of the regulatory authorities.

NASA has sponsored some research into the issue of the relationship between fatigue and performance decrements based on information contained in these incident reports. The researchers found that about 21% of the reports citing air transport flight crew errors were related to the general issue of fatigue. The researchers selected a control or comparison group of incident reports citing these problem areas but where fatigue was not an apparent factor. Most of the incidents in both data sets involved altitude or clearance operational deviations (e.g., taking off or landing without clearance). The deviations within the fatigue set tended to occur more frequently during the more critical descent, approach, and landing flight phases. This finding was expected because fatigue is most likely to set in towards the end of a flight or work day. Another key finding was that duty period length and workload level were most frequently cited as being responsible for the fatigue.

The FAA has quantified the economic value of all major accidents involving the part 121 air carriers and part 135 air carriers over the 1985–1994 period that were attributable to pilot error. For the part 121 analysis, the FAA examined the seating capacity, average passenger load, and the average replacement cost of a representative sample of both narrow body and wide body aircraft. The FAA examined the same factors in estimating the cost of a part 135 accident.

For the part 121 analysis, the FAA assumes that an average airplane costs $14.75 million in 1994 dollars and carries 107 people (101 passengers, 3 flight crewmembers, and 3 flight attendants). In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of $2.7 million to statistically represent a human fatality avoided. The values for serious and minor injuries are $518,000 and $38,000, respectively. For the part 135 analysis, the FAA used the same assumptions regarding the value of a human life and injuries. The amount of airplane damage and severity of injuries was based on a review of NTSB reports of all accidents involving 10–30 seat aircraft over the period from 1985–1994.

Based on these assumptions, the FAA estimated that the economic value of the 71 serious accidents involving pilot error used in part 121 scheduled operations that were involved in serious accidents over the 1985–1994 period at $1.896 billion. Projecting this total from 1996 to 2010 yields a discounted $1.151 billion. The comparable total for the 8 serious accidents involving pilot error used in part 121 supplemental operations that were involved in serious accidents over this time period was $273.9 million. Projecting this total from 1996 to 2010 yields a discounted $166.3 million. The corresponding total for the 71 aircraft involving pilot error used in part 135 operations with 10 to 30 seats that were involved in serious accidents over that period was $602.32 million. Projecting this total from 1996 to 2010 yields a discounted $365.73 million.

The NASA research study summarized above revealed that 21% of pilot error incidents were related to fatigue. Applying this proportion to the total discounted value of the pilot error accidents, using the assumptions noted above, one could conclude that fatigue resulted in accidents valued at $398.24 million (present value, $241.81 million) for part 121 scheduled operations, $57.52 million (present value, $34.92 million) for part 121 supplemental operations, and $126.49 million (present value, $76.80 million) for part 135 operations over a 15-year period. These estimates could be used to provide some idea of the potential safety benefits of this proposed rule, assuming it is 100% effective in preventing these types of accidents.

Cost Savings and Benefits

Initial annual quantifiable compliance costs for part 121 scheduled, part 121 supplemental, and scheduled part 135 air carriers were estimated at $58.66 million, $41.16 million and $7.18 million, respectively. Subsequent annual quantifiable compliance costs were estimated at $49.40 million, $41.06 million and $6.12 million, respectively. Over the period from 1996 to 2010, costs would amount to $750.33 million (present value, $458.63 million), $625.99 million ($383.40 million) and $92.89 million (present value, $56.75 million), respectively.

For part 121 scheduled operators, these compliance costs should be more than offset by cost savings that are projected to result from productivity enhancements for the scheduled part 121 carriers. The same conclusion may apply to the part 135 operators as well in view of the potential magnitude of the unquantifiable costs. But cost savings expected to accrue to the part 121 supplemental carriers are not expected be sufficient to offset potential costs for this sector of the industry.

The estimates for the scheduled part 135 air carriers do not include the potential costs of the proposed general limitations on flight duty and rest periods, which are expected to be fairly significant, although not quantifiable at the present time. On the other hand, these estimates do not take account of potential cost savings as air carriers gain more experience in implementing the various combinations of the available options, which should in theory result in the selection of the most cost effective option. The extent to which these potential impacts would offset each other cannot be determined on the basis of the available data.

These estimates also do not include the potential costs of the proposed rule for air taxi operators, which could not be quantified. The FAA expects that the costs of the reserve pilot restrictions would probably not be substantial for this sector of the industry because the majority of the operators should be able to adopt the second reserve pilot scheduling option without major operational disruptions. The FAA does not have sufficient information to estimate the potential compliance costs for this sector of the industry if the ''other commercial flying'' restrictions in the proposal are adopted. The potential for cost savings would appear

to be more limited for these operators because of the point-to-point and geographically restricted nature of their operations, which would tend to limit the length of flight assignments.

The FAA has quantified the economic value of all major accidents involving the part 121 fleet and part 135 fleet over the 1985–1994 period that were attributable to pilot error. Based on this value and the proportion of incidents with similar causal factors where pilots were affected by fatigue, the FAA estimated that if proposed rule were 100% effective at eliminating fatigue as a factor in accidents, it could prevent accidents involving part 121 scheduled operations valued at $242 million and part 121 supplemental operations at $35 million over a 15-year period. The same methodology yielded an estimate of $77 million for the potential effectiveness of the proposal in preventing part 135 accidents. It is important to note that it is unlikely that this proposal would be 100% effective, in part because it addresses duty and rest times, but does not require pilots to rest. The FAA is unable to develop an estimate of effectiveness of this proposal in reducing fatigue-related incidents, but welcomes data and methodologies that may assist such an effort.

The table below compares the costs, potential benefits, and cost savings sections. The FAA therefore concludes that the proposed rule would be cost beneficial for the part 121 scheduled operators, sector of the air transportation industry, would probably be cost beneficial for the entire part 121 sector of the air transportation industry, and could be cost beneficial for the scheduled part 135 operators as well, provided the unquantifiable compliance costs for the commuters do not exceed about $127.5 million (discounted) over a 15-year period.

The FAA does not have sufficient information at this time to evaluate the cost effectiveness of this proposal for air taxi operators. A more definitive overall conclusion would not be appropriate in view of the lack of data pertaining to how the affected air carriers would modify their operations in order to comply with the proposed rule and also to take advantage of the opportunities to increase pilot productivity. The FAA has decided to issue this proposed rule with the expectation that additional data that can clarify these issues will be forthcoming.

FIFTEEN YEAR DISCOUNTED COSTS/COST SAVINGS

	Part 121 scheduled	Part 121 supplemental	Total part 121	Part 135 scheduled	Air taxi
Compliance costs	$458,627,143	$383,403,020	$842,030,163	$56,750,685	Unknown.
Reserve requirements	458,627,143	224,331,554	682,958,697	56,750,685	Unknown.
Other requirements	0	159,071,466	159,071,466	0	Unknown.
Potential safety benefits	241,806,628	34,922,912	276,729,539	76,802,495	Unknown.
Net costs of reserve and other requirements	216,820,515	348,480,108	565,300,623	(20,051,810)	Unknown.
Cost savings	1,658,078,896	215,723,343	1,873,802,239	107,431,330	Unknown.
Increased flight times	1,504,206,226	215,723,343	1,719,929,569	107,431,330	Unknown.
Other cost savings	153,872,670	0	153,872,670	0	Unknown.
Net combined cost savings of proposal	1,441,258,380	(132,756,765)	1,308,501,615	127,483,140	Unknown.

This rulemaking should be considered complimentary to the Commuter Rule and the Air Carrier Training Program final rule. One of the goals of these three rulemaking actions is to prevent the 67 accidents that represent the accident-rate gap between part 135 commuter operators and part 121 operators. The FAA estimates that over the next 15 years, closing this gap would prevent 67 accidents at a present value benefit of $350 million.

In terms of the accident rate gap, the benefits of this NPRM are a part of this total benefit. However, it is not possible to allocate that benefit among the three rulemaking actions because it difficult to determine which rulemaking action would prevent a given accident. For example, individual accidents may be prevented by any one or a combination of several factors such as:

- Preventing the occurrence of a problem with an airplane in the first place (Commuter rule);
- Providing more or better crew training to properly respond to the problem after it occurs (Air Carrier Training Program rule);
- Providing a dispatcher to help identify a problem before it becomes a potential accident (Commuter rule);
- And ensuring pilots are not overworked and tired (Pilot Rest and Duty NPRM).

The Commuter Rule only addresses a portion of the necessary requirements to close the accident-rate gap. If the $51 million present value in net cost savings of this rule ($107 million in cost savings minus $56 million in costs) is combined with the cost of the Commuter Rule, $75 million, and the cost of Pilot Training, $34 million, the total cost, $58 million (−$51+$75+$34), is still less than the estimated $350 million benefit of eliminating the accident-rate gap. These rules combined need only be 17 percent effective to be cost-beneficial. The $77 million in potential safety benefits of this proposed rule is a subset of the aforementioned $350 million.

Analysis of Alternatives

As explained above, the FAA is required to consider alternatives to the proposed rule; the two alternatives will be discussed in this section. As indicated earlier in this preamble, if this proposal on reserve time assignments is not issued as a final rule, the FAA intends to ensure that the current rule, as interpreted, is being correctly implemented. The FAA has estimated that doing so could cost part 121 operators in excess of $2.5 billion and part 135 operators in excess of $450 million discounted over the next 10 years. At the same time, the resulting potential safety benefits would be no more than those estimated for this proposal.

Alternative Number One

This alternative would be to maintain the status quo. This option would not impose any costs on operators because it would not require that they change their pilot scheduling practices. It could impose costs on society, however, by increasing the risk of a preventable fatigue-related accident. The accumulation of a substantial body of scientific evidence documenting the harmful effects of fatigue on pilot performance have increased the need to amend these rules. In addition, given the scientific data available and the NTSB recommendations resulting from an accident at Guantanamo Bay in August 1993, this option is not feasible.

Alternative Number Two

This alternative was the original proposal considered by the FAA. After surveying industry, the FAA determined

that such a proposal would impose substantial costs, and that these costs would outweigh any potential benefits. Consequently, the current proposal was established, which uses some of the elements of this original proposal.

This alternative would afford operators three options for scheduling their reserve pilots but does not address the fatigue problem for pilots who are not on reserve status. The three options for scheduling reserve pilots are as follows:

Option 1: The certificate holder provides a minimum of 10 hours of advance notice of reporting time for flight duty.

Option 2: The certificate holder provides 8 hours of rest each 24 hour period of reserve duty. The 8 hours of rest must be assigned prospectively and remain constant for the duration of the reserve assignment.

Option 3: For each 24 hour period of reserve duty the flight crewmember is limited to 18 hours of eligibility for flight duty, with the remaining 6 hours being set aside for rest.

The potential annual compliance costs for the part 121 scheduled carriers were estimated at $225 million on an annual basis based on the assumption they would have to increase their pilot staffing by 4%. The second most heavily affected sector of the industry was the air taxi operators, who indicated they would have to increase their pilot staffing by 74%, resulting in potential annual compliance costs of $175 million. The FAA estimated that commuter operators would increase their pilot staffing by 5% in order to avoid disrupting their flight schedules, resulting in potential annual compliance costs of $24 million. Finally, the annual compliance cost for the part 121 unscheduled operators was estimated at $11.5 million.

The total annual cost was estimated to be $436 million for the air carrier industry. These costs would not be offset by any cost savings because of the limited nature of this alternative (i.e., applies only to reserve pilots). In addition, this alternative would have a considerably lower potential for preventing accidents than the proposal for the same reason. The FAA therefore concluded that this alternative would not be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.''

Under FAA Order 2100.14A, the criterion for a ''substantial number'' is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. This rule would primarily affect part 121 and 135 operators. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft. The FAA's criteria for ''significant impact'' are $4,600 or more per year for an unscheduled operator, $119,900 or more per year for a scheduled operator whose airplane fleet has over 60 seats, and $67,000 or more for other scheduled carriers.

A. Initial Regulatory Flexibility Determination

The present value cost savings of the proposed rule over the 10-year study period would be $1.20 billion for the part 121 scheduled carriers or $148.47 million annualized at 7%. Based on a total fleet of 3,429 airplanes for these air carriers, the projected annualized cost savings of this rule would be $43,298 per airplane. Given the threshold annualized cost of $119,900 for a small part 121 scheduled operator, the FAA estimates that the proposed rule would have a significant economic impact on any operator owning 3 or more aircraft but less than 10 aircraft. However, there are only 7 small operators in this category. Since this is less than 11, a substantial number of these entities would not be affected.

The present value of the net costs of the proposed rule over the 10-year study period would be $139.56 million for the part 121 unscheduled carriers or $19.82 million annualized at 7%. Based on a total fleet of 557 airplanes for these operators, the projected annual cost of this rule would be $42,747 per airplane. This exceeds the cost threshold of $4,600 per unscheduled operator for all small operators in this sector of the industry.

The present value of the cost savings of the proposed rule over the study period has been estimated at $50.68 million for the part 135 scheduled carriers or $7.2 million annualized at 7%. Based on a total fleet of 950 airplanes for these operators, the projected annual cost of this rule would be $7,579 per airplane. Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that an operator would need to own exactly 9 airplanes in order to incur a significant economic impact. As there is only one part 135 scheduled carrier with 9 airplanes, the FAA concludes that a substantial number of small entities in this sector of the industry would not be significantly affected by the proposed rule.

The FAA requests comments from small air taxi operators regarding the potential economic impacts of this proposed rule on their operations. Would additional pilots be required to maintain the current scope of their operations?

B. Initial Regulatory Flexibility Analysis

As the proposed rule would have a significant economic impact on a substantial number of small part 121 unscheduled operators, an initial regulatory flexibility analysis has been prepared. This analysis assures that agencies have examined selected regulatory alternatives that could minimize the economic burdens of the proposed rule on small entities. As delineated in section 603(b) of the RFA, this initial regulatory flexibility analysis is required to identify: (1) the reasons why the agency is considering this action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule would apply, (4) the projected reporting, record keeping, and other compliance requirements of the proposed rule, and (5) all Federal rules which may duplicate, overlap or conflict with the proposed rule. This section of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Why the Agency Action is Taken

The main reason for the NPRM is that the FAA Administrator, when prescribing safety regulations, is required by statute to consider ''the duty of an air carrier to provide service with the highest possible safety in the public interest.'' The FAA has determined that the most appropriate way to meet this statutory mandate is to ensure that flight crewmembers are provided with the opportunity to obtain sufficient rest to perform their routine and emergency safety duties. The need for this rulemaking is supported by studies on pilot fatigue conducted by NASA, anecdotal evidence of the problem contained in pilot reports submitted to the Aviation Safety Reporting System, and the complexity and age of the current flight duty and rest period restrictions.

2. Objective of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to increase safety in passenger- and cargo-carrying operations, both scheduled and unscheduled. The proposed rule would also clarify and

simplify existing regulations pertaining to duty period limitations, flight time limitations, and rest requirements for crewmembers. This objective is more thoroughly discussed in the preamble to the NPRM.

The legal basis for the proposed rule is 49 U.S.C. 106(g), 1153, 40101, 40102, etc.

3. Description of the Small Entities Affected by the Proposed Rule

The proposal would affect part 121 air carriers conducting both scheduled and unscheduled operations. The FAA estimates that the proposal would affect only one scheduled part 121 operator, which owns 9 aircraft. The remaining operators in this category each own 5 or fewer aircraft, less than the number required for a substantial economic impact potential. The FAA estimates that the proposal would have a substantial economic impact on all 23 small part 121 unscheduled operators, which operate a total of 99 aircraft.

4. Compliance Requirements of the Proposed Rule

The proposed duty period limitations, flight time limitations, and rest requirements would apply to all crewmembers conducting part 121 domestic, flag, and supplemental operations, as well as those engaged in commuter and on-demand operations. These limitations and requirements would also apply to part 121 and 135 certificate holders conducting part 91 operations. The preamble to the NPRM provides a more thorough discussion of the compliance requirements of the proposed rule.

5. Overlap of the Proposed Rule With Other Federal Regulations

No other Federal rules would duplicate, overlap, or conflict with the proposed rule.

6. Alternatives to the Proposed Rule

Alternative Number One did not have any potential compliance costs. Alternative Number Two would have been more costly and would have had a significant impact on a substantial number of entities for the three industry areas where costs could be estimated. Alternative Number Two would have projected annual costs of $65,325 per aircraft for part 121 scheduled operators. Therefore, any operator with 2 or more aircraft would be significantly affected by this alternative rule. Since these operators would comprise more than one-third of the total number of small operators in this category, the FAA concludes that a substantial number of small entities would be affected. In addition, Alternative Number Two was substantially more costly for part 121 unscheduled operators than the proposed rule, which would have affected all operators in this sector of the industry. The impacts of this Alternative on these operators would be considerably greater than the proposed rule.

Alternative Number Two would have projected annual costs of $20,443 per aircraft for part 135 scheduled operators.

Therefore, any operator with 4 or more aircraft would be significantly affected by this alternative rule. Since these operators comprise at least one-third of the total number of small entities in this sector of the industry, the FAA concludes that a substantial number of small operators would be affected. This Alternative, which would be considerably more costly for on-demand air taxis than scheduled part 135 operators, would have a significant economic impact on a substantial number of small operators in this sector of the industry as well.

In addition, the FAA considered an alternative proposal for part 121 supplemental carriers that was proposed at an ARAC (Aviation Regulatory Advisory Committee) meeting. Under this proposal, part 121 supplementals could develop alternative policies and procedures or flight schedules that allow a flight crewmember to anticipate when a flight time assignment might occur or that otherwise ensures a flight crewmember will not be assigned to a flight unless that flight crewmember is adequately rested for that flight assignment. However, the FAA rejected this option because it does not provide one level of safety for the industry. These different policies or procedures would be ripe for abuse by both certificate holders and pilots and they would be very difficult for the FAA to enforce. In short the FAA believes this alternative would not provide the same level of safety as the proposal. The FAA does, however request comments on other possible alternatives.

Initial Trade Impact Analysis

The FAA believes that in specific foreign countries, including Great Britain, Germany, and some other European countries, pilot, flight, and duty regulations are more restrictive because they make use of more variables as constraints than in the United States. These variables include 1) take-offs and landings, 2) day or night flights, 3) cumulative duty hours per week and month, 4) the number of flights in a duty period, 5) whether the flight crew is ''acclimated'' to the local time. The net impact of the proposal on the U.S. firms' operating costs is likely to be considerably less than the compliance costs with current rules because of the projected gains in productivity. Foreign air carriers may already be burdened with similar or higher costs to the extent the applicable regulations are as strict or more strict than the proposal. The FAA solicits information from commenters regarding these policies.

Any impacts should be limited to the part 121 air carriers. Most of the nation's 65 commuter airlines operate almost exclusively on domestic routes, with only limited international operations and no transoceanic routes. Similarly, air taxi operators seldom fly outside of domestic airspace.

Federalism Implications

The proposed regulations do not 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 various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511) and have been assigned OMB Control Numbers 2120–0585. The FAA believes that this proposed rule would not impose any additional recordkeeping or reporting requirements. If, however, a commenter finds that this notice would require additional recordkeeping or reporting, the FAA solicits specific information on the volume, type, and costs of the additional records or reports.

Conclusion

For the reasons set forth under the heading ''Regulatory Analysis,'' the FAA has determined that this proposed regulation is a significant rule under Executive Order 12866, and is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also, for the reasons stated under the headings ''Trade Impact Statement'' and ''Regulatory Flexibility Determination,'' the FAA certifies that the proposed rule would have a significant economic impact on a

substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation Safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Aviation Safety, Pilots, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105. 46103, 46105.

2. Section 121.1 is amended by adding a new paragraph (g) to read as follows

§ 121.1 Applicability.

* * * * *

(g) As specified in § 121.487, the duty period limitations, flight time limitations and rest requirements of this part are also applicable to duty periods and flight time performed for a certificate holder conducting operations under part 91 or part 135 of this chapter.

Subpart R—[Removed and reserved]

3. Subpart R (§§ 121.480 through 121.493) is removed, and the subpart heading is reserved.

4. Subpart Q is revised to read as follows:

Subpart Q—Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

Sec.

121.471 Applicability and terms.
121.473 Pilot duty period limitations, flight time limitations, and rest requirements.
121.475 Flight engineer duty period limitations, flight time limitations, and rest requirements.
121.477 Reserve and standby assignments.
121.479 Additional flight crewmember duty period and flight time scheduling limitations.
121.481 Weekly and monthly flight crewmember flight time limitations.
121.483 Additional flight crewmember rest requirements.
121.485 Deadhead transportation.
121.487 Duty period and flight time limitations: Other flying for a certificate holder.

Subpart Q—Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

§ 121.471 Applicability and terms.

(a) This subpart prescribes duty period limitations, flight time limitations and rest requirements for flight crewmembers in domestic, flag, and supplemental operations.

(b) For the purpose of this subpart the following terms and definitions apply:

(1) *Approved sleeping quarters* means an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator.

(2) *Assigned time* means a period of time when the flight crewmember is assigned by the certificate holder to activities other than flight duties or reserve time. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks, or any other assignments at the direction of the certificate holder. Assigned time may be considered part of a duty period or not part of a duty period, at the discretion of the certificate holder.

(3) *Calendar day* means a period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

(4) *Duty period* means a period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base, to reflect the total elapsed time.

(5) *Operational delays* means delays due to operational conditions and requirements that are beyond the control of the certificate holder such as adverse weather, aircraft equipment malfunctions, and air traffic control. It does not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight or mail, or similar events.

(6) *Protected time* means a period of time during which a certificate holder may not contact the flight crewmember and the crewmember has no responsibility for work. Protected time occurs only during a reserve assignment pursuant to § 121.477(b)(2).

(7) *Reserve time* means a period of time when a flight crewmember must be available to report upon notice for duty involving flight time and the certificate holder allows the flight crewmember at least 1 hour to report. Reserve time is not considered part of a rest period and is not considered part of a duty period involving flight time. Reserve time ends when the flight crewmember reports for a duty period, when the flight crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest period. Reserve time does not include activities defined as ''assigned time.''

(8) *Rest period* means a period of time free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. A flight crewmember is not ''free of all restraint'' or ''free of all responsibility'' if that person must, among other things, accept phone calls, carry a beeper, or contact the air carrier. If a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

(9) *Standby duty* means any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g. airport, crew lounge) designated by a certificate holder. Standby duty is considered part of a duty period. Standby duty commences when the flight crewmember is placed on standby duty. Standby duty ends when the flight crewmember is relieved from duty associated with an actual flight or is otherwise relieved from duty.

§ 121.473 Pilot duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a pilot and a pilot may accept that assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) Except as required in paragraphs (c), (d), and (e) of this section, no certificate holder may assign a flight crew consisting of two pilots, and no pilot may accept, a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each pilot must be scheduled for a subsequent rest period of at least 10 consecutive hours. This rest period

must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot's next rest period is at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept, a scheduled duty period of up to 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each pilot must be scheduled for a subsequent rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 12 consecutive hours if the pilot has not actually exceeded the maximum 16-hour duty period and if the pilot's next rest period is at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (c) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(d) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept, a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a subsequent rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 16 consecutive hours if the pilot has not actually exceeded the maximum 18-hour duty period and if the pilot's next rest period is at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (d) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(e) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, a certificate holder may assign a flight crew consisting of 4 pilots, and a pilot may accept, a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a subsequent rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 20 consecutive hours if the pilot has not actually exceeded the maximum 24 hour duty period and if the pilot's next rest period is at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 121.475 Flight engineer duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a flight engineer, and a flight engineer may accept, a scheduled duty period only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, no certificate holder may assign a flight engineer, and no flight engineer may accept, a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each flight engineer must be scheduled for a subsequent rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the flight engineer has not actually exceeded the maximum 14-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) A certificate holder may assign a flight engineer, and a flight engineer may accept, a scheduled duty period of more than 14 hours, but no more than 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each flight engineer must be scheduled for a subsequent rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 12 consecutive hours if the flight engineer has not actually exceeded the maximum 16-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (c) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(d) A certificate holder may assign a flight engineer, and a flight engineer

may accept, a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. The certificate holder must assign to the flight or flights in that duty period at least two flight engineers. Each flight engineer must be given an opportunity to rest in flight in approved sleeping quarters. Each flight engineer must be scheduled for a subsequent rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 16 consecutive hours if the flight engineer has not actually exceeded the maximum 18-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (d) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(e) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, the certificate holder may assign a flight engineer, and a flight engineer may accept, a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. The certificate holder must assign to the flight or flights in that duty period at least two flight engineers. Each flight engineer must be given an opportunity to rest in-flight in approved sleeping quarters. Each flight engineer must be scheduled for a subsequent rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 20 consecutive hours if the flight engineer has not actually exceeded the maximum 24-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 121.477 Reserve and standby assignments.

(a) *Standby duty.* Standby duty commences when a flight crewmember is placed on standby duty. Standby duty periods must be scheduled in accordance with §§ 121.473 or 121.475. Standby duty periods end when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

(b) *Reserve time.* A certificate holder may assign a reserve assignment to a flight crewmember and a flight crewmember may accept that assignment only when the applicable provisions of this section are met. Each flight crewmember must be given a 10-hour rest period before being assigned to reserve time. Reserve time may be assigned under either of the following options and the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment:

(1) A certificate holder may schedule a flight crewmember assigned to reserve time and a flight crewmember may accept any duty period if the flight crewmember receives at least 10 hours notice and if the duty period is scheduled in accordance with §§ 121.473 or 121.475. If a flight crewmember does not receive at least 10 hours notice, the following limitations apply:

(i) If at least 8 hours notice is given, the scheduled duty period is limited to no more than 12 hours. The duty period required under this paragraph (b)(1) may be extended to 14 hours when the extension is due to operational delays.

(ii) If at least 6 hours notice is given, the scheduled duty period is limited to no more than 10 hours. The duty period required under this paragraph (b)(1) may be extended to 12 hours when the extension is due to operational delays.

(iii) If at least 4 hours notice is given, the scheduled duty period is limited to no more than 8 hours. The duty period required under this paragraph (b)(1) may be extended to 10 hours when the extension is due to operational delays.

(iv) If fewer than 4 hours notice is given, the scheduled duty period is limited to no more than 6 hours. The duty period required under this paragraph (b)(1) may be extended to 8 hours when the extension is due to operational delays.

(2) A certificate holder may assign a flight crewmember to a reserve assignment, and a flight crewmember may accept a duty period, if, for each 24-hour period, the flight crewmember receives at least a regularly scheduled 6-hour period that is protected from any contact by the certificate holder. The hours of the 6-hour protected time period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18 hour reserve period. The length of the duty period and the subsequent rest period must be in accordance with §§ 121.473 or 121.475.

§ 121.479 Additional flight crewmember duty period and flight time scheduling limitations.

(a) A flight crewmember is not considered to be scheduled for a duty period in excess of the scheduled duty period limitations if the duty periods to which he or she is assigned are scheduled and normally terminate within the limitations, but, due to operational delays, the flights to which he or she is assigned are not at block out time expected to reach their destination within the scheduled duty period. However, no air carrier may assign a flight crewmember, nor may a flight crewmember accept, a flight that at block out time would extend the flight crewmembers scheduled duty period maximum more than two hours, as provided in §§ 121.473 and 121.475.

(b) A flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled time.

§ 121.481 Weekly and monthly flight crewmember flight time limitations.

No certificate holder may schedule any flight crewmember, and no flight crewmember may accept, an assignment for flight time under this part if that flight crewmember's total flight time for a certificate holder under parts 91, 121, and 135 of this chapter will exceed—

(a) 32 hours in any 7 consecutive calendar days.

(b) 100 hours in any calendar month.

§ 121.483 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept, any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under §§ 121.473 and 121.475 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that contain flights that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

§ 121.485 Deadhead transportation.

Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was relieved from duty to return to his or her home station is not considered part of a rest period. For duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

§ 121.487 Duty period and flight time limitations: Other flying for a certificate holder.

No flight crewmember who is employed by a certificate holder conducting operations under this part may do any other duty or flying for any certificate holder conducting operations under part 121 or 135 of this chapter if that duty or flying for a certificate holder plus his or her duty or flying under this part will exceed any duty period or flight time limitation in this part. This section applies to any other duty or flying under part 91, part 121 or part 135 of this chapter for any certificate holder whether the duty or flying precedes or follows the flight crewmember's flying under this part.

Subpart S—[Removed and reserved]

5. Subpart S (§§ 121.500 through 121.525) is removed, and the subpart heading is reserved.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

7. Section 135.1 is amended by adding a new paragraph (b) to read as follows

§ 135.1 Applicability.

* * * * *

(b) As specified in § 135.275, the duty period limitations, flight time limitations and rest requirements of this part are also applicable to duty periods and flight time performed for a certificate holder conducting operations under part 91 or part 121 of this chapter.

8. The heading for subpart F is revised to read as follows:

Subpart F—Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements

9. Sections 135.261, 135.263, 135.265, 135.267, 135.269, and 135.273 are revised and 135.275 is added.

§ 135.261 Applicability and terms.

(a) This subpart prescribes duty period limitations, flight time limitations and rest requirements for flight crewmembers in commuter and on-demand operations.

(b) For the purpose of this subpart the following terms and definitions apply:

(1) *Approved sleeping quarters* means an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator.

(2) *Assigned time* is time when the flight crewmember is assigned by the certificate holder to activities other than flight duties or reserve time. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks, or any other assignments at the direction of the certificate holder. Assigned time may be considered part of a duty period or not part of a duty period, at the discretion of the certificate holder.

(3) *Calendar day* means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

(4) *Duty period* means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base, to reflect the total elapsed time.

(5) *Operational delays* means delays due to operational conditions and requirements that are beyond the control of the certificate holder such as adverse weather, aircraft equipment malfunctions, and air traffic control. It does not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight or mail, or similar events.

(6) *Protected time* means a period of time during which a certificate holder may not contact the flight crewmember and the crewmember has no responsibility for work. Protected time occurs only during a reserve assignment pursuant to § 121.477(b)(2).

(7) *Reserve time* means a period of time when a flight crewmember must be available to report upon notice for duty involving flight time and the certificate holder allows the flight crewmember at least 1 hour to report. Reserve time is not considered part of a rest period and is not considered part of a duty period involving flight time. Reserve time ends when the flight crewmember reports for a duty period, when the flight crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest

period. Reserve time does not include activities defined as ''assigned time.''

(8) *Rest period* means the time period free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. ''Free of all restraint'' and ''free of all responsibility'' would include, but not be limited to, accepting phone calls, being required to carry a beeper, or being required to contact the air carrier. If a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

(9) *Standby duty* means any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g. airport, crew lounge) designated by a certificate holder. Standby duty is treated like any other duty associated with flight. Standby duty commences when the flight crewmember is placed on standby duty. Standby duty ends when the flight crewmember is relieved from duty associated with an actual flight or is otherwise relieved from duty.

§ 135.263 Pilot duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a pilot and a pilot may accept that assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) For aircraft for which only one pilot is required, no certificate holder may assign a pilot and no pilot may accept a scheduled duty period of more than 14 hours. The duty period may not include more than 8 scheduled hours of flight time. The pilot must be scheduled for a rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) Except as required in paragraphs (d), (e), and (f) of this section, no certificate holder may assign a flight crew consisting of two pilots and no pilot may accept a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each pilot must be scheduled for a rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (c) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(d) A certificate holder may assign a flight crew consisting of 3 pilots and a pilot may accept a scheduled duty period of more than 14 hours, but no more than 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each pilot must be scheduled for a rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 12 consecutive hours if the pilot has not actually exceeded the maximum 16-hour duty period and if the pilot is provided with a subsequent rest period of at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (d) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(e) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 16 consecutive hours if the pilot has not actually exceeded the maximum 18-hour duty period and if the pilot is provided with a subsequent rest period of at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(f) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, a certificate holder may assign a flight crew consisting of 4 pilots and a pilot may accept a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (f) may be reduced to no fewer than 20 consecutive hours if the pilot has not actually exceeded the maximum 24 hour duty period and if the pilot is provided with a subsequent rest period of at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the

scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (f) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 135.265 Reserve and standby assignments.

(a) *Standby duty.* Standby duty commences when a flight crewmember is placed on standby duty assignment. Standby duty periods must be scheduled in accordance with § 135.263. Standby duty periods end when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

(b) *Reserve time.* A certificate holder may assign a reserve assignment to a flight crewmember and a flight crewmember may accept that assignment only when the applicable provisions of this section are met. Each flight crewmember must be given a 10-hour rest period before being assigned to reserve time. Reserve time may be assigned under either of the following options and the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment:

(1) A certificate holder may schedule a flight crewmember assigned to reserve time and a flight crewmember may accept any duty period if the flight crewmember receives at least 10 hours notice and if the duty period is scheduled in accordance with § 135.263. If a flight crewmember does not receive at least 10 hours notice, the following limitations apply:

(i) If at least 8 hours notice is given the scheduled duty period is limited to no more than 12 hours. The duty period required under this paragraph (b)(1) may be extended to 14 hours when the extension is due to operational delays.

(ii) If at least 6 hours notice is given the scheduled duty period is limited to no more than 10 hours. The duty period required under this paragraph (b)(1) may be extended to 12 hours when the extension is due to operational delays.

(iii) If at least 4 hours notice is given the scheduled duty period is limited to no more than 8 hours. The duty period required under this paragraph (b)(1) may be extended to 10 hours when the extension is due to operational delays.

(iv) If fewer than 4 hours notice is given the scheduled duty period is limited to no more than 6 hours. The duty period required under this paragraph (b)(1) may be extended to 8 hours when the extension is due to operational delays.

(2) A certificate holder may assign a flight crewmember to a reserve assignment and a flight crewmember may accept a duty period if, for each 24-hour period, the flight crewmember receives at least a regularly scheduled 6-hour period that is protected from any contact by the certificate holder. The hours of the 6-hour protected time period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18 hour reserve period. The length of the duty period and the subsequent rest period must be in accordance with § 135.263.

§ 135.267 Additional flight crewmember duty period and flight time scheduling limitations.

(a) A flight crewmember is not considered to be scheduled for a duty period in excess of the scheduled duty period limitations if the duty periods to which he or she is assigned are scheduled and normally terminate within the limitations, but, due to operational delays, the flights to which he or she is assigned are not at block out time expected to reach their destination within the scheduled duty period. However, no air carrier may schedule a flight crewmember, nor may a flight crewmember accept a flight that at block out time would extend the flight crewmembers scheduled duty period maximum more than two hours, as provided in § 135.263.

(b) A flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled time.

§ 135.269 Weekly and monthly flight crewmember flight time limitations.

No certificate holder may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time under this part if that flight crewmember's total flight time for a certificate holder under parts 91, 121, and 135 of this chapter will exceed—

(a) 32 hours in any 7 consecutive calendar days.

(b) 100 hours in any calendar month.

§ 135.271 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under § 135.263 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

§ 135.273 Deadhead transportation.

Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was relieved from duty to return to his or her home station is not considered part of a rest period. For

duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

§ 135.275 Duty period and flight time limitations: Other flying for a certificate holder.

No flight crewmember who is employed by a certificate holder conducting operations under this part may do any other duty or flying for a certificate holder conducting operations under part 121 or part 135 of this chapter if that duty or flying for a certificate holder plus his or her duty or flying under this part will exceed any duty period or flight time limitation in this part. This section applies to any other duty or flying under part 91, part 121, or part 135 of this chapter for a certificate holder whether the duty or flying precedes or follows the flight crewmember's flying under this part.

§ 135.271 [Redesignated as § 135.277]

10. Section 135.271 is redesignated as § 135.277 and revised to read as follows:

§ 135.277 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under § 135.263 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

Issued in Washington, D.C., on December 11, 1995.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

[FR Doc. 95–30547 Filed 12–14–95; 8:45 am]

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14 CFR Part 121

[Docket No. 27264]

RIN 2120–AF96

The Age 60 Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments and notice of agency decisions.

SUMMARY: This action announces FAA's decisions on a number of issues regarding the FAA's ''Age 60 Rule''. The issues include: responding to the comments requested in 1993 regarding various aspects of the Age 60 Rule, including the ''Age 60 Project, Consolidated Database Experiments, Final Report'', and issues raised by pilots seeking exemptions from the Age 60 Rule, issues raised by a petition for rulemaking by the Professional Pilots Federation (PPF), requesting the FAA to remove the Age 60 Rule.

After review of all comments, studies, and other pertinent information, the FAA has determined not to initiate rulemaking to change the Age 60 Rule at this time. The FAA also has decided not to grant any of the pending petitions for exemption or rulemaking.

ADDRESSES: The complete docket containing recent comments on the Age 60 Rule, including copies of studies related to the Age 60 issue, may be examined at the Federal Aviation Administration, Office of the Chief Counsel (AGC–200), Rules Docket, Room 915–G, 800 Independence Avenue SW., Washington, DC 20591, weekdays (except Federal holidays) between 8:30 a.m. and 5:00 p.m.

Availability of Disposition

Any person may obtain a copy of this Disposition by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should be identified by the docket number of this Disposition.

FOR FURTHER INFORMATION CONTACT: Daniel V. Meier, Jr., AFS–240, Regulations Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3749 or (202) 267–8086.

SUPPLEMENTARY INFORMATION:

I. Background

Section 121.383(c) of the Federal Aviation Regulations (FAR) (14 CFR § 121.383(c)) prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. The FAA adopted the ''Age 60 Rule'', as it has come to be known, in 1959 (24 FR 9767, December 5, 1959).

In late 1990, the FAA initiated a study aimed at consolidating available accident data and correlating it with the amount of flying by pilots as a function of their age. This resulted in a document entitled ''Age 60 Project, Consolidated Database Experiments, Final Report'', dated March 1993 (the ''Hilton Study''). The FAA held a public meeting and requested comments regarding various issues related to the Age 60 Rule, including the Hilton Study (58 FR 21336, April 20, 1993). The FAA has reviewed the written comments received in the docket (Docket No. 27264) and to the comments presented at the public meeting. The FAA is also responding to a number of pending petitions from pilots seeking an exemption from the Age 60 Rule. Finally, the FAA is responding to a petition for rulemaking submitted by the Professional Pilots Federation (PPF).

This document describes the history and basis for the rule, the major events during the history of the rule, the FAA's response to the issues raised above, and the FAA's rationale for maintaining the Age 60 Rule.

I(a). Basis for the 1959 Rule

The FAA promulgated the Age 60 Rule in 1959 because of concerns that a hazard to safety was presented by utilization of aging pilots in air carrier operations. As noted in that rulemaking,

the agency found ''that there is a progressive deterioration of certain important physiological and psychological functions with age, that significant medical defects attributable to this degenerative process occur at an increasing rate as age increases, and that sudden incapacity due to such medical defects becomes more frequent in any group reaching age 60.'' 24 FR 9767. It also found that ''[s]uch incapacity, due primarily to heart attacks and strokes, cannot be predicted accurately as to any specific individual on the basis of presently available scientific tests and criteria.'' 24 FR 9767. The FAA noted ''[o]ther factors, even less susceptible to precise measurement as to their effect but which must be considered in connection with safety in flight, result simply from aging alone and are, with some variations, applicable to all individuals. These relate to loss of ability to perform highly skilled tasks rapidly, to resist fatigue, to maintain physical stamina, to perform effectively in a complex and stressful environment, to apply experience, judgment and reasoning rapidly in new, changing and emergency situations, and to learn new techniques, skills and procedures.'' 24 FR 9767. While the FAA recognized that such losses generally start well before age 60, the agency determined that beyond age 59 the risks associated with these losses become unacceptable for pilots in part 121 operations.

The agency noted that, due to seniority, older pilots tend to ''fly the largest, highest-performance aircraft, carrying the greatest number of passengers over the longest non-stop distances,'' in the highest density traffic. 24 FR 9767. The FAA concluded that, because of the high risks involved, persons should be precluded from piloting aircraft in part 121 operations after reaching age 60.

While the Age 60 Rule prohibits pilots from operating aircraft under part 121 after reaching their 60th birthdays, it does not impose mandatory retirement for affected pilots. A pilot may work as a flight engineer or flight instructor in operations conducted under part 121 or may work as a pilot in operations outside of part 121. The pilot also may function as an instructor or evaluator in simulators, an area that has expanded over the years.

I(b). Subsequent Rulemaking Actions

In the early 1980's, the FAA explored possible changes to the Age 60 Rule, stemming from direction from Congress in 1979 that the National Institutes of Health (NIH) study the desirability of mandatory age retirement for certain pilots. (P.L. 96–171). The NIH assigned the National Institute on Aging (NIA) the primary responsibility for implementing the legislation. In the report from this study, ''Report of the National Institute on Aging Panel on the Experienced Pilot Study'' (August 1981) (NIH report), NIA recommended that the age 60 limit be retained. Among other things, the panel concluded that, while no medical significance could be attached to age 60 as a mandatory retirement age, age-related health changes endanger aviation safety and no medical or performance appraisal system could be identified that would single out pilots who would pose a hazard to safety. The conclusions reached by the NIA panel and the supporting statements contained in the report pointed to an inability to distinguish those persons who, as a consequence of aging, present a threat to air safety from those who do not. The following recommendations were made:

1. The age 60 limit should be retained for pilots in command and first officers.

2. The FAA or some other appropriate Federal agency should be requested to engage in a systematic program to collect the medical and performance data necessary to consider relaxing the age 60 rule.

3. In view of the growing importance of commuter air carriers, the age 60 limit should be extended to cover all pilots engaged in carrying passengers for hire, specifically including operations under part 135 to provide a level of safety equivalent to that provided in part 121 operations.

As part of its study, NIA looked at information on functional decline with age and the increased frequency of a number of medical disorders (including cardiovascular disease, neurological and mental disorders, and changes in perceptual, psychomotor and intellectual functions) associated with aging. In addition, NIA looked at death and disability rates in air carrier pilots and flight engineers, death rates in the general population, and accident rates for pilots.

In response to the NIH recommendations, in 1982 the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) on the Age 60 Rule (47 FR 29782, July 8, 1982). The FAA was considering identifying a select group of pilots who would continue flying in part 121 operations in order to allow the FAA to collect data on selected pilots, age 60 and over, flying in actual operations under part 121. The FAA was also considering establishing age limits for flight engineers serving on airplanes operated under part 121. The FAA withdrew the ANPRM in 1984 (49 FR 14692, April 12, 1984). The FAA found that valid tests did not exist for selecting a group of pilots age 60 and over who could act as the test group for collecting data. The FAA was concerned that without valid selection tests these pilots would create an unacceptable safety risk to part 121 operations. The FAA also stated that it was not appropriate to establish an age limit for flight engineers at that time.

I(c). 1993 Request for Comments on Age 60 Rule and Hilton Study

In late 1990 the FAA contracted for the Hilton Study, a 2-year study to consolidate accident data and correlate it with flying experience and age of pilots. This study analyzed accident data between 1976 and 1988. Although the focus of the study was on part 121 pilots, the study analyzed the accident rates for pilots in part 91, 121, and 135 operations holding Class I, Class II, and Class III medical certificates. The authors of the study found ''no hint of an increase in accident rate for pilots of scheduled air carriers as they neared their 60th birthday'' but noted that there were no data available on scheduled air carrier pilots beyond age 60. Observing a ''hint, and a hint only,'' of an increase in accident rates for Class III pilots older than 63 years of age, they concluded that ''one could cautiously increase the retirement age to age 63.''

In addition, on April 20, 1993, the FAA published a notice of public meeting and request for comments regarding various aspects of the Hilton Study. (58 FR 21336; April 20, 1993.) The public meeting was held on September 29 and 30, 1993, and the comment period closed on October 15, 1993. In response to the FAA's notice of public meeting and request for comments, 46 members of the public made presentations at the public meeting, and the FAA received approximately 1,200 written comments on the Hilton Study and the Age 60 Rule in general before the close of the comment period.

I(d). Commuter Rule

The FAA addressed the Age 60 Rule in a Notice of Proposed Rulemaking (Notice 95–5, 60 FR 16230, March 29, 1995) that would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121 (the ''Commuter Rule''). In that notice, the FAA proposed to apply all part 121 rules, including the Age 60 Rule, to those pilots currently employed in certain part 135 scheduled operations who would be affected by the Commuter Rule. In response to Notice 95–5 the FAA received many comments dealing

with the question, not raised by Notice 95–5, of whether there should be an age limitation for part 121 pilots and what that age should be. To that extent those comments have been considered in this Disposition.

I(e). Public Comment

1993 Meeting and Request for Comments

In addition to the comments at the 1993 public meeting and received during the comment period, the FAA received over 2,000 comments after the comment period closed. The issues raised in the comments by both sets of commenters are similar and will be discussed together. The majority of the commenters at the public meeting and those submitting written comments before the close of the comment period are in favor of raising the age limit, while the majority of commenters submitting written comments after the close of the comment period are against raising the age limit. Commenters in favor of raising the age limit offer several different alternatives, ranging from age 62 to no age limit. Some commenters opposed to a rule change state that the age limit should be decreased to age 55.

Commuter Rule

In addition to the above comments, over 2,000 comments on the age 60 issue (including about 1,000 postcards from members of an airline pilot organization) were received in the docket established for the Commuter Rule. The overwhelming majority of these comments support maintaining the Age 60 Rule and do not express opinions that are different from other comments received in response to the public meeting and request for comments in Docket 27264.

The issues raised at the public meeting, the written comments, and the Commuter Rule are discussed below.

I(f). Professional Pilots Federation Petition for Rulemaking To Repeal the Age 60 Rule

The PPF, an organization whose membership is composed of pilots who oppose the Age 60 Rule, filed a petition for rulemaking in July 1993 (Docket 27375; 58 FR 46585, September 2, 1993) that requests the removal of § 121.383(c). PPF believes that Federal law and policy, operational and regulatory developments since promulgation of the rule, and the results of the Hilton Study warrant the removal.

In its petition, the PPF states that the Age 60 Rule has no basis in fact; refusal to repeal the rule would constitute arbitrary and capricious action by the FAA, contrary to the provisions of the Administrative Procedure Act; refusal to repeal the rule without evidence of a need to retain it in the interest of public safety is inconsistent with Federal policy against age discrimination; and repeal of the rule would have a positive economic impact on the U.S. air carrier industry.

In addition, the PPF states that the FAA should exercise leadership in the international community and repeal the Age 60 Rule; the Age 60 standard in ICAO Annex 1 is ready for change; and the JAA has proposed increasing the maximum age limit for air transport pilots to 65. (The FAA notes that JAA's proposal is to allow pilots to operate in multi-pilot operations up to the age of 65, provided no more than one pilot in the cockpit is over the age of 60.)

The major issues brought up in the PPF's petition for rulemaking (such as age discrimination, the Hilton Study, economic impacts of the Age 60 Rule, etc.) are discussed below in connection with the disposition of comments in Docket No. 27264. Because the FAA has determined that there is insufficient justification to change the Age 60 Rule at this time and that the rule is consistent with Federal law, PPF's petition for rulemaking will be denied in a separate document.

I(g). Petitions for Exemption From the Age 60 Rule

Over the years the FAA has received numerous petitions for exemption from the Age 60 Rule. The FAA consistently has denied these petitions. Some petitioners have sought review in the United States Courts of Appeals, and the Courts have upheld the denials. However, in 1992 when the Hilton Study was underway, the FAA delayed action on the pending petitions for exemption and those newly received. Most of the issues raised by the petitions were so intertwined with the underlying Age 60 Rule issues, the FAA chose to defer action pending deliberation of the broader issues involving the Age 60 Rule itself. There are currently over 100 petitions for exemption pending. Summaries of the petitions were published in the Federal Register, and comments were received for some of the petitions. These comments expressed opinions and did not provide the FAA with new information. The issues raised by commenters are discussed in sections II, III, and V below.

Overall, the petitioners provide similar information and arguments that they contend justify exemptions. Part of their assertions involve their personal fitness (see section II(a)) and the ability of the FAA to test them individually with simulators (see section III(a)). They state that they hold or are qualified to hold first-class airman medical certificates (see section III(b)). Some state that they have extensive skill and experience as pilots (see section II(c)). They also note that the FAA gives many exemptions to younger pilots for various medical conditions (see section III(b)).

The petitioners also contend that the Age 60 Rule is discriminatory (see section V(b)). In addition, the petitioners state that the Age 60 Rule is an arbitrary age and that the age of 60 has not scientifically been shown to be an accurate predictor of health or ability (see section II(a)). They state that studies used by the FAA in the past to justify the rule are flawed, including the NIH Study and the reports prepared by Richard Golaszewski (Acumenics Research and Technology, Incorporated, *The Influence of Total Flight Time, Recent Flight Time and Age on Pilot Accident Rates, Final Report* (1983) (First Golaszewski Report); *General Aviation Safety Studies: Preliminary Analysis of Pilot Proficiency* (1991) and his subsequent work, *Additional Analysis of General Aviation Pilot Proficiency* (1993) (Second Golaszewski Report) (section II(b)). They state that pilots at age 60 are in the safest age group and that forcing them to retire results in individuals with less experience serving as pilots, resulting in lower safety (sections II(c) and V(f)). They state that sudden incapacitation is not a cause of accidents in Part 121 operations (section II(a)). They state that the rule was promulgated for economic reasons alone (section V(a)). They state that the rule is contrary to the Age Discrimination in Employment Act (section V(b)). They point out that other countries have higher retirement ages for their pilots (section V(c)). They state that deleting the rule would save the air carriers money (section IV(a)).

Under 49 U.S.C. 44701(e) the FAA, in its discretion, may grant exemptions from the requirements of a regulation if it finds that such an exemption is in the public interest. Section 11.25 (14 CFR § 11.25) provides procedures for petitioning for an exemption. Section 11.25(b)(5) provides that such a petition must—

> Contain any information, views, or arguments available to the petitioner to support the action sought, the reasons why the petition would be in the public interest and, * * * the reason why the exemption would not adversely affect safety or the action to be taken by the petitioner to provide a level of safety equal to that provided by the rule from which the exemption is sought.

The petitioners have the burden of showing that the exemption is justified.

The FAA does not doubt that the petitioners, in general, are well-qualified, experienced, and safe pilots. However, no petitioner has suggested or shown how he or she is unique compared to others who are subject to the rule.

To the extent that petitioners' comments involve the justification for the Age 60 Rule itself, these issues are discussed in sections II, III, and V below.

As to individual petitioners' fitness to serve as pilots past the age of 60, which petitioners assert can be demonstrated by individualized testing or evaluation, no petitioner has submitted a protocol, nor is the FAA aware of a protocol, that would permit the FAA to adequately assess an aging individual's relative risks of incapacitation, either sudden or subtle. They have not shown how their circumstances are different in a significant way from others subject to the rule. For instance, there is nothing unique in petitioners holding first-class airman medical certificates; all pilots who exercise the privileges of an Air Transport Pilot certificate are required to hold a first-class airman medical certificate. Numerous pilots operating under part 121, who are approaching age 60, have long, distinguished careers. Indeed, the FAA considered these issues in response to the comments in Docket 27264, and they are further responded to below.

The FAA has determined that the petitioners have not shown their circumstances to be unique compared with those who comply with the rule, and that the issues they raise are more appropriately considered in connection with whether the FAA should propose to change the general rule. The FAA will in separate documents deny the pending petitions for exemption from the Age 60 Rule.

In addition, the FAA intends to handle future petitions for exemptions for the Age 60 Rule differently. The normal procedures for handling petitions for exemption are set forth in §§ 11.25 and 11.26. They include publishing a summary of the petition, reviewing any comments received, and issuing an individualized grant or denial of the petition that recites the basis for the petition and the FAA's analysis as to why it is granted or denied. This process can take a substantial amount of time. It appears not to be necessary, however, to carry out all these steps for future petitions for exemption from the Age 60 Rule that are substantially similar to those discussed here. In the future, the FAA will deny any petition for exemption from the Age 60 Rule without first publishing it for comment unless it contains a proposed technique, not discussed in this Disposition, to assess an individual pilot's abilities and risks of subtle and sudden incapacitation. Petitions that do not contain new information or a protocol that may allow the FAA to accurately assess the individual will be summarily denied. A copy of this disposition will be attached to the denial to explain the basis for the FAA's denial. Any petition that does contain such a proposal will be processed and evaluated as provided in §§ 11.25 and 11.26.

II. Concerns Regarding Aging Pilots

After considering all comments and known studies, FAA concludes that concerns regarding aging pilots and underlying the original rule have not been shown to be invalid or misplaced.

II(a). Physical Degradation with Age

As noted above, the Age 60 Rule was promulgated in 1959 to address the progressive deterioration of physiological and psychological functions with age and an increasing occurrence of significant medical defects and sudden incapacitation associated with this degenerative process. While emphasizing heart attacks and strokes, the agency also noted ''other'' factors, less susceptible to precise measurement, resulting from aging alone. Major emphasis was placed on the difficulties in attempting to predict incapacity.

Several commenters state that the death rate in general and the cardiovascular death rate in particular for men in the relevant age groups declined dramatically between 1960 and 1989. The commenters believe, therefore, that the age limit could be raised. Other commenters, however, state that insurance statistics show a dramatic rise in cardiovascular disease in people over age 50.

In the 35 years since the rule was introduced, there has been remarkable progress in medicine, particularly in the ability to evaluate cardiovascular fitness and in the diagnosis and treatment of cardiac and cerebrovascular illness. For example, cardiovascular disease rises with age, steeply, beginning between ages 55 and 65, and, though mortality has dropped since 1960, cardiovascular disease remains the most frequent cause of death in pilots and the general population. With this increased incidence of cardiovascular disease in the older population, the risk for unexpected threatening events is raised. Cardiac events (e.g., heart attacks, sudden death) during flight have continued to occur in low but fairly consistent numbers over the years and have caused general aviation accidents.

Other conditions are known to increase in incidence or to become more complicated with aging. Many present greater difficulties of detection and risk assessment than does cardiovascular disease. Among these are cerebrovascular disease; malignancies; endocrine dysfunction; neurological disorders; psychiatric diagnoses including depression; and decline in sensory and motor capabilities. There has been an increasing awareness of the more subtle adverse conditions affecting performance, those related to cognitive functioning.

The concepts of ''age-related cognitive decline'' or ''age-associated memory impairment'' describe objective impairment of cognitive function (e.g., attention; language; some visuospatial skills; and, particularly, memory), as a result of aging. These concepts are applied to describe a longitudinal decline in performance that is age appropriate, i.e., a normal outcome of aging (Petersen, RC; Normal Aging, Mild Cognitive Impairment, and Early Alzheimer's Disease; *The Neurologist*; 1:000–000, 1995 [in press]). Since there now is general agreement that a functional decline occurs with normal aging, on-going research seeks tools for its identification and quantification and to determine its significance for individuals. A condition of ''mild cognitive impairment'' also is recognized and appears to be the herald of degenerative disease or dementia. Again, research looks for diagnostic tools and for predictor variables of the ultimate outcome for the individual.

Dementia in the adult population is a major and growing medical and social problem. It occurs at all ages, but its incidence increases with advancing age so that the largest group of demented patients is in the older age groups (Differential Diagnosis of Dementing Diseases; National Institutes of Health Consensus Conference Statement; Volume 6, Number 11; July 6–8, 1987). One in 10 persons over age 65 and nearly half of those over 85 have Alzheimer's disease alone, and increasingly it is found in people in their 40's and 50's.

Many of the dementing diseases can be confirmed or denied with certainty only at autopsy. The history includes a decline from the individual's previously attained intellectual level and usually involves defects in memory, other cognitive capacities, and adaptive behavior. Usually, it is marked by significant deterioration of memory and

of one or more other intellectual functions such as language, spatial or temporal orientation, judgment, and abstract thought. Onset is usually but not always insidious, and the patient may or may not be aware of the dementia. Deterioration may vary from subtle changes that are overlooked by coworkers, family, and friends, to totally incapacitating.

Is there a level of cognitive dysfunction acceptable in a part 121 pilot? On a particular basis, can pilots be screened for mild cognitive deficits or for the ''normal'' age-related cognitive decline? Can early dementia be identified before the affected pilot becomes a risk? How do we know when the pilot becomes a risk? How specifically are the deficits identified through currently available neuropsychological testing related to performance and to the real requirements of piloting? What is an acceptable level of risk in aviation? When does the incidence of cognitive deficit become unacceptable? Are current proficiency evaluations adequate for determination of a pilot's ability to perform adequately under every reasonably anticipated circumstance regardless of age? At present, adequate answers to these questions have not been provided.

In its 1981 report, the Institute of Medicine (IOM) of the National Academy of Science (on which the NIH report is based) noted that in addition to the increased incidence of cardiovascular disease and degradation in cognitive functions associated with aging, other effects of aging become more prevalent. For example, diabetes, thyroid disease, pulmonary dysfunction, and gastrointestinal malignancy are more common with advancing age.

There is other deterioration with age. For instance, research points to a decline with age in the speed and/or quality of many aspects of perceptual and motor functioning. In the general population, the ability to see fine details declines slightly in adulthood until about 60, and more markedly thereafter. With age, there is typically some loss in ability to hear effectively; the higher the frequency beyond about 1,000 hertz, the greater the loss.

Clearly, there is progressive anatomic, physiological, and cognitive decline associated with aging, albeit variable in severity and onset among individuals. Physicians, psychologists, physiologists, and scientists of other disciplines have identified many age-associated variables, some easily measurable, some not, that may be important to human function. There may be other variables, not yet identified, that play an equally significant role. We know that, at some age, everyone reaches a level of infirmity or unreliability that is unacceptable in a pilot in air transportation. That age will vary from person to person but cannot yet be predicted in a specific individual. Because it is unacceptable for these pilots to work until failure or until there is obvious impairment, the age of 60 has served well as a regulatory limit since 1959. Many commenters state that the Age 60 Rule is arbitrary and there is no scientific basis for it. Others would choose a different arbitrary age. For instance, the Acting Chief, Adult Psychological Development, Behavioral and Social Research Program, NIA, submitted a comment in 1993 on behalf of the NIA. He states the view that the age limit could be increased ''to an age closer to the mid-sixties.'' However, the studies he cites do not point to an age closer to the mid-sixties any more definitively than they point to the age of 60 as an appropriate age limit.

While science does not dictate the age of 60, that age is within the age range during which sharp increases in disease mortality and morbidity occur.

II(b). Hilton Study and Other Accident Rate Studies

Over the years, several reports have examined the rate of accidents as they relate to age in various populations groups, in an effort to better understand how aging may affect safety. As discussed above, the Hilton Study was initiated by the FAA to look at accident rates in pilots. Many commenters state that the report provides justification for a rule change. They point out that the report shows the same accident rate for pilots who are 50 and pilots who are 65. They state that the report finds that accident rates of part 121 pilots decrease with age. Some other commenters, however, state that the report does not provide justification for a rule change. They state that the report is not meaningful since correlating accident rates solely with total flying hours and recent flying hours is not a valid measurement. They also state that it is not meaningful to compare private pilots who fly beyond age 60 with pilots who fly a lot of hours per year in part 121 operations.

David Michaels, Ph.D., MPH, Associate Professor of Epidemiology, The City University of New York Medical School, submitted comments on the Hilton Study. He points out that accident rates are a very crude tool to examine the relationship between pilot age, health, and performance. The IOM, he notes, ''recognized the existence of a fundamental problem: since there are no Class I pilots flying Part 121 flights beyond age 60, there are no medical, performance or even accident data on the group of greatest interest. Needed are data on vision, reaction time, judgment, circadian rhythm and many other neurobehavioral and physiological measures.'' This problem led to the IOM's recommendation that extensive additional data be collected and analyzed to better understand the relationship of aging and pilot performance. Dr. Michaels notes that the Hilton Study did not take the approach recommended by the IOM. Rather than examining the neurobehavioral and physiological measures detailed by the IOM, the authors of the Hilton Study examined only accident rates. (However, the authors of the Hilton Report fully carried out the work statement of their research contract with the agency which asked only that accidents be studied.)

Dr. Michaels further noted that numerous studies have demonstrated that, among various groups of pilots examined, increasing accident risk is associated with increasing age. He includes papers by Golaszewski (1983); Mortimer (1991); and an analysis by the Office of Technology Assessment (1990) which support this finding. He also invites attention to the citation by the NIA Report of studies by Harper (1964); Lategola, et al (1970); Rohde and Ross (1966); and Booze (1977), all demonstrating increasing risk with increasing age. Dr. Michaels warns that it would be contrary to customary epidemiologic practice to accept unconditionally and definitively findings from a single study that are substantially different from those of previous studies.

There is contention regarding the Hilton Study's grouping of pilots for comparison purposes. Richard Golaszewski, the author of two papers on the relationship between pilot age and accident rates, belives that the Hilton Study's conclusions are based on the use of a group of pilots (holders of Class III medical certificates who have more than 500 hours of total flight time and 50 hours of flight time in the last year), inappropriate for inferences about the likely accident rate performance of airline pilots of age 60 and above. He believes this group is least like airline pilots and suggests his own alternative: Professional pilots who did not fly for airlines but who held Class I or II medical certificates. Mr. Golaszewski cites the Second Golaszewski Report for conclusions opposite to the Hilton Study—increases in accident rates with age for professional pilots.

The Hilton Study provides a discussion of the First Golaszewski Report, noting those researchers' disagreement with Mr. Golaszewski's methodology and questioning his conclusions. The study also notes methodological concerns regarding the cited works by the Office of Technology Assessment; Mortimer; and Guide and Gibson (1991).

Dr. Michaels concludes that (1) the Hilton Study does not present convincing evidence that pilots holding Class I medical certificates past the age of 60 are not at increased risk of accidents, and (2) that the study is a methodologically invalid foundation for rulemaking. He suggests that the analyses performed are not valid because of the small size of the study (very few accidents and a very large number of flight hours), because the study is insensitive to the real concerns (whether aging is associated with increased risk for incapacitation), and because the study does not have well-documented exposure data. The later refers the fact that the Hilton Study calculated accident rates by comparing the total hours flown. However, because most accidents occur during take offs and landings, Dr. Michaels states that hours flown is not a useful measure in calculating the risk of accidents. He believes that the methods used in the Hilton Study would obscure any increased rate of accidents among older pilots in the analyses presented.

The First Golaszewski Report concluded that pilots with Class I medical certificates (required for part 121 air carrier pilots in command) and Class II medical certificates (required for other commercial pilots) had a substantially higher accident rate after age 60 than at younger ages. This report was cited by the FAA in denying a petition for exemption from § 121.383(c) submitted by Courtney Y. Bennett et al., and John H. Baker, et al., in 1986. Golaszewski, in the study report itself, noted and resolved to the FAA's satisfaction various sources of potential error and provided rationale for the choices made. Because the study viewed the accident experience of holders of Class III medical certificates (required for non-commercial operations) and of all classes of medical certificate combined rather than that of identified airline pilots, however, and because of disagreement with Golaszewski's selection of numerators and denominators for calculating accident rates, the study findings and methodology were disputed by the petitioners in their later legal action in a U.S. Circuit Court of Appeals. Although the court identified limitations in the study, it upheld the FAA's denial of the petition. *Baker* v. *FAA*, 917 F.2d 318 (7th Cir. 1990).

The Second Golaszewski Report indicated similar findings. These studies were based on data contained in the National Transportation Safety Board Accident Records Database and the FAA Comprehensive Airman Information System medical database.

It should be noted that increasing accident rates with age is not found just in aviation. The National Research Council (NRC) has found increasing car accident rates with increasing driver age. In a report published in 1988, the NRC concluded that ''older drivers show an involvement in crashes that is more extensive than that of middle-age drivers, * * *'' *Transportation in an Aging Society*, Transportation Research Board, National Research Council, Washington, D.C. 1988. While safely piloting an airplane is more complex than driving an automobile, both require knowledge, quick reflex actions, good judgment, long-and short-term recall, and many other skills and abilities. Accident rate data represent a quantitative compilation of occurrences where skills and abilities were, for one reason or another, inadequate to cope with a specific situation.

Because statistical analysis of over-age-60 pilots in part 121 operations cannot be done (because there are no such pilots) studies must use surrogate data. As has been the case in both the Hilton Study and the Golaszewski reports, such analyses are subject to the criticism that the data used do not reflect reality and, therefore, are flawed. This is even truer with the consideration of accident rate data in car crashes. Unfortunately, accurate counts of all pilots flying in scheduled air carrier operations during a given time period and their age, current and total flight time, and accident experience are not available. Accidents in air carrier operations are, fortunately, rare, and there are other factors (e.g., seniority bidding for routes) that compound the difficulties encountered in developing meaningful statistics regarding the effects of aging. Further, flying by non-part 121 pilots generally involves aircraft, equipment, airports, operational conditions, and operating procedures that are quite different than part 121 operations. Nevertheless, these studies and the efforts of earlier researchers provide a foundation for this current consideration of the issue.

The Hilton Study, the First Golaszewski Report, and the Second Golaszewski Report sought to define the effects of aging on older pilots in terms of accident rates. While conclusions may differ as to the effect of aging on pilots, the studies are similarly limited by the rule itself since data cannot be gathered on pilots over age 60 operating in part 121 operations. Factors that may have contributed to the contradictory conclusions are that the accident rates for pilots over age 60 can be determined only in operations outside of part 121 and, therefore, may not be fully useful in drawing conclusions about pilot performance in operations conducted under part 121; and grouping the data differently may lead to different conclusions. While we believe the studies all tend to support a regulatory age limit, they provide no consensus as to precisely what that age limit should be.

In the NIH Study, the most comprehensive study yet performed of the issues involved in age-related retirement of airline pilots, the Panel found that ''age-related changes in health and performance influence adversely the ability of increasing numbers of individuals to perform as pilots with the highest level of safety and, consequently, endanger the safety of the aviation system as a whole.'' In response to the question, ''What is the effect of aging on the ability of individuals to perform the duties of pilots with the highest level of safety?'', the Panel responded, in part, that—

> Undoubtedly, the number of individuals experiencing substantial decline in performance does increase with advancing age * * * Variability in performance appears to increase, and average performance to decrease, with increasing age * * * the risk of an accident increases in the later life of a pilot, and * * * such risk probably accelerates with advancing age * * * The duties of pilots embrace not only maneuvering skill but also decision-making, crew coordination and resource management. Decline in cognitive and psychomotor performance, as well as in physiological performance, occurs with increasing age and will affect how these duties are executed. The health status of the pilot is apt to affect his/her flying performance. In this regard, subtle decrements in performance due to aging processes or subclinical functional impairment are more likely to pose a problem than is complete failure of performance due to sudden incapacitation.

The Hilton Study has not provided answers to these basic concerns.

After careful deliberation, the FAA has determined that the Hilton Study does not provide an acceptable basis warranting proposing to change the Age 60 Rule. Supporters of both the Hilton Study and the First and Second Golaszewski Reports have good points. The subgroups studied by each is to some extent limited, in that they necessarily do not mirror the subgroup

of part 121 pilots to which the Age 60 Rule applies. The studies do not look at pilot performance, indeed, they count all accidents regardless of cause (not just those caused by pilot error), and do not count incidents of pilot incapacitation that did not result in accidents.

Debate surrounding the reliance to be placed on these studies illustrates the difficulty of the task. The changes in accident rates identified in the Hilton Study were small, and its conclusions, therefore, were appropriately cautious. In view of the lack of consensus among the best experts who have looked at this matter, the FAA considers caution appropriate in declining to consider the Hilton Study warranting a change to the Age 60 Rule at this time.

II(c). Performance

Many commenters assert that older pilots have more experience and better performance capability than younger pilots, while other commenters state that older pilots lose performance ability. First, age does not necessarily imply quantity or quality of experience. Experience is valuable, but it does not offset all risks or decrements associated with aging. Also, at some point, the law of diminishing returns comes into play. Once a pilot achieves a certain level of expertise, additional flight time will not significantly improve pilot performance.

It must also be pointed out that reference to ''younger'' pilots may be misleading in this context. It is the FAA's experience in the industry that retiring age 60 pilots (who generally are captains) are not replaced by very young and inexperienced pilots. Rather, they are replaced by pilots who have substantial experience as pilots in the first officer position, and often as flight engineers before that.

In addition, some commenters state that pilots near age 60 have performed heroically, proving that performance does not degrade with age and experience, while other commenters state that courageous performances by pilots who were near age 60 are not reasons for abandoning the rule. While the FAA recognizes that certain older pilots have performed heroically in specific circumstances, the decision to change the Age 60 Rule cannot be based on isolated commendable acts. The FAA must make a decision on whether change to the rule is called for based on the totality of evidence available on the safety implications of aging.

II(d). Health and Technology

Many commenters state that since the rule was issued medical technology has advanced and life expectancy has increased; hence, they conclude, the rule is obsolete. In addition, they reference that medical technology is now more capable of screening out pilots with medical risks and that fatigue is no longer an issue due to more modern aircraft that reduce workload and stress levels. Many commenters also state that the aging process can vary markedly among individuals and that some individuals are in worse physical or mental condition at age 40 than others are at age 60. Hence, these commenters do not believe that age should be a means for determining capability. Many other commenters, however, state that older pilots are not in good physical shape and improvements in medical screening do not detect the subtle impairments with age that can undermine the margin of safety.

As noted earlier, the incidence of cardiovascular disease rises with age, and it remains that most frequent cause of death in pilots and the general population. Though the FAA relies on sophisticated medical assessment and monitoring to permit the certification of carefully selected pilots with known heart disease, the need for the highest level of safety in air carrier operations has required that the increasing, unpredictable danger associated with aging be limited.

In addition, there has been an increasing awareness of the more subtle adverse conditions affecting performance, those related to cognitive functioning. Current medical certification procedures identify those individuals who are at most risk and are adequate for assessing many medical problems in pilots. The significance of the known as well as the potential unknown or unmeasurable adverse factors increases with aging, however, and reduces confidence in the sensitivity of the medical certification process. The Age 60 Rule recognizes this reduction of sensitivity in the context of the statutory recognition that the highest possible degree of safety is required in air carrier operations. As both the incidence of incapacitation risk factors and other adverse effects increase with age, the Age 60 Rule provides additional confidence in air transportation safety.

II(e). Multicrew Concept

Some commenters point out that operations under part 121 use 2-pilot crews, and some also have a flight engineer on board. They state that if one pilot becomes incapacitated, the other crew member(s) can take over. The FAA agrees that the multicrew concept provides an additional measure of safety. Indeed, redundancy in safety features is an important part of the overall safety benefits in part 121 operations, including not only pilots but also other personnel, aircraft structures, and procedures. The safety benefits of redundancy would be reduced, however, if the level of safety of any of the elements were to degrade. The sudden incapacitation of a pilot is not without risk even in a multiple-member crew and is to be avoided. Of equal concern is the prospect of subtle degradation in the judgment, cognitive function, and crew coordination that may accompany advancing age. Unlike the case of sudden incapacitation, such degradation may not be readily apparent to the other crew, and it may be difficult for the crew to deal with the results.

The FAA does not consider the fact that part 121 operations have multiple pilots to be a basis for permitting one (or both) of those pilots to be at unacceptable risk for age-related problems.

III. Alternatives to an Age Limitation

III(a). Performance Checks

Some commenters suggested that the FAA can do performance checks for pilots past age 60 in simulators to ensure that they meet the performance standards. Periodic proficiency and competency checks are intended to detect a pilot's performance deficiency and to correct those deficiencies before the pilot is returned to flight operations. These checks only verify the state of a pilot's performance at the time of the checks. They are not useful for detection of early or subclinical cognitive defects that may subtly degrade performance or which, in time, may progress to risks for errors in judgment or other actions that may jeopardize safety. The checks do not predict whether an individual pilot's performance will degrade at any time in the future as a result of age. In addition, in its 1981 report, NIA noted that proficiency checks and simulator checks usually are designed to train pilots to meet standards of proficiency under optimal testing conditions using known routines and maneuvers. Although the proficiency checks suffice for pilot performance purposes, they are not suitable for testing complex cognitive functions under actual conditions, such as fatigue and stress; nor are they used to determine at what rate the skills learned in the training sessions decline between two consecutive checks. Standard maneuvers used in proficiency tests are inappropriate for measuring any but obvious decrements in pilot performance. Their inadequacy stems

from the fact that the maneuvers are well-known in advance; they may be well-practiced and over-learned by experienced pilots; and they may give no indication of the pilot's ability to perform them under particular levels of stress, fatigue, or unexpected decision-making requirements. Furthermore, the pass/fail nature of the testing program; the probable wide variability among testers; and the train-to-proficiency nature of these tests make them inadequate as a screening mechanism.

III(b). Class I Medical Certificates and Special Issuance Certificates

Some commenters state that part 121 pilots are required to hold FAA medical certificates, and that the medical certification process tests their medical fitness. Commenters also point out that the FAA issues waivers to pilots and permits them to fly with various medical conditions, including cardiovascular problems. They state that if such pilots can be evaluated, older pilots can too.

The question of operational privileges for aging pilots is not comparable to the question of assessment of younger airmen with specific medical conditions. Although individuals with known medical conditions have been returned to air carrier duties, their circumstances are not comparable with those of an individual who has reached an advanced age. For the person with known disease, the prognosis for the disease can normally be assessed and specific tests or evaluations identified to monitor the condition. Special issuance medical certificates are granted to airmen who have certain known medical conditions or static defects that are disqualifying under the established standards of the Federal Aviation Regulations. This practice does not compromise safety and does not demand similar consideration with respect to the Age 60 Rule. When a special issuance medical certificate is granted, the condition in question has been clearly identified, and the agency has been able to develop a means of assessment and surveillance specially designed to demonstrate the individual's capabilities and to identify any adverse changes. If that is not possible, certification is not granted. Such is not the case in aging, since there are no generally applicable medical tests that can, at this time, adequately determine which individual pilots are subject to incapacitation secondary to either acute cardiovascular or neurological events or to more subtle adverse conditions related to decline of cognitive functioning.

III(c). Suggested Protocol for Gathering Additional Data

One commenter states that data from actual part 121 pilots under 60 and over 60 are needed. The commenter suggested that a pilot group should be established that can fly over age 60. He believes that a cohort of over age 60 pilots can be identified with a quantifiable five year cardiovascular risk that is lower than the risk in the 50 to 59 year age group. Also this group can be tested by serial performance testing to ensure that there has not been subtle incapacitation. The kind of data that is needed to change the rule could then be collected and analyzed.

The commenter recommends that a consensus working group of experts, appointed by the Federal Air Surgeon, deliver a document that describes a battery of state-of-the-art testing to identify a group of age 60 or older pilots who have the attributes for continued safe flying. A second group of non-flying crew age 60 or older would also be considered. The document would include all testing, follow up, methodology, etc. The Federal Air Surgeon would then review the protocol, obtain additional expert help as needed, and produce the final protocol. Finally, the FAA would choose the sites for participants in the long term surveillance program.

FAA Response: While the FAA appreciates the proposed protocol that the commenter submitted, the FAA does not find it an acceptable basis for initiating a rule change at this time. The FAA's ANPRM in 1982 proposed identification of a select group of aged 60 and over pilots who would continue flying in part 121 operations to permit FAA to collect data. The FAA withdrew the ANPRM in 1984 because valid selection tests for the group did not exist. The FAA was concerned that, without valid selection tests, these pilots would create an unacceptable safety risk in part 121 operations. The commenter does not suggest any data that indicates that a group described would be able to identify any such tests. The FAA has the same concerns today.

IV. Financial Impact of the Age 60 Rule

IV(a). Costs

Some commenters stated that raising the age limit will reduce costs, while other commenters stated that raising the age limit will increase costs.

FAA Response: For the reasons discussed in this Disposition, the FAA has determined that an amendment to the Age 60 Rule should not be proposed at this time. Therefore, the FAA has not evaluated the economic impact of a proposed change.

IV(b). Hiring of Pilots

Some commenters state that increasing the age limit would result in the hiring of fewer new pilots, while others state that there would be no change in hiring and no increase in furloughs because economic success rather than retirements determines hiring and furloughs. Commenters estimate that between 10 and 50 percent of pilots would continue to fly if the age limit is extended.

FAA Response: The FAA believes that the primary determinant of new pilot hiring and furlough is general economic conditions rather than retirements. The effects of increasing the age of mandatory retirement would depend on the number of pilots opting to delay their retirement, which may vary considerably among air carriers. Pilots with long tenures at a single carrier would be less inclined to delay their retirement than pilots who began their service at a relatively late age and may not have sufficient years of service at their present employer to qualify for full vesting in pension plans. In addition, the hiring and furlough plans of those air carriers that permit pilots over age 60 to serve as flight engineers would be less affected. Any effects on furlough and new hires would be temporary as retirements would not be delayed by more than the difference between the existing and the amended mandatory retirement age.

V. Other Comments

V(a). Original Promulgation of Age 60 Rule

Several commenters contend that the Age 60 Rule was promulgated for economic reasons in response to an improper personal request from the chairman of American Airlines to the Administrator of the FAA and question the FAA's recent actions in reviewing the rule.

FAA Response: When the Age 60 Rule was first promulgated in 1959, the FAA followed standard rulemaking procedures. Notices were published in the Federal Register (draft releases 59–4, 5, and 6, 24 FR 5249, 5248, and 5247, June 27, 1959), the public was given an opportunity to comment on the proposal, and then the final rule was issued. The rule was not issued to facilitate the operations of any air carrier. The rule was promulgated in order to maintain a high level of safety in part 121 operations, and that remains the FAA objective at the present time.

V(b). Age Discrimination

Many commenters state that the current rule discriminates against pilots 60 years of age or older and that the Age 60 Rule is not in compliance with the Age Discrimination in Employment Act. In addition, many commenters state that the original establishment of the age 60 limit discriminated against people 60 years and older. However, many commenters who are opposed to changing the rule state that since pilots knew about the age 60 limit when they were hired, it is not discriminatory.

FAA Response: The FAA agrees that limitations based on age are to be avoided if possible. However, safety in air transportation is paramount. As discussed above, the FAA has not found a way to acceptably evaluate the inevitable deterioration that occurs with age. Considering that the consequences of a pilot's subtle or sudden incapacitation potentially are so severe, the FAA has determined that at this time safety requires the Age 60 Rule to remain unchanged.

The Equal Opportunity Employment Commission suggests that the FAA use special testing or screening to identify those pilots over age 60 who should be required to stop serving in part 121 operations. They note that some employers of pilots in non-part 121 operations have resolved age discrimination litigation by agreeing to use such additional testing to develop data about pilots' health. However, the FAA has not been apprised of the testing protocols or of the results of any such testing, has not seen them discussed in the medical literature, and has not been party to the agreements. Accordingly, these are not a basis to determine that such testing can be used instead of an age limitation.

V(c). Foreign Pilots Over Age 60

Many commenters reference ICAO standards, the JAA proposal, and the foreign countries that permit pilots to be over age 60, with varying restrictions. In addition, many commenters point out that the FAA allows foreign carriers to operate in U.S. airspace and airports with over age 60 pilots and questioned why U.S. pilots over 60 can't operate in U.S. airspace and airports.

FAA Response: Following the FAA's promulgation of the Age 60 Rule, the International Civil Aviation Organization (ICAO) adopted changes to international safety standards that established an age limit of 60 for the pilot in command of large transport aircraft operating in international air transport service. ICAO standards do not limit the age of the second in command, although an age limit of 60 is recommended. In October 1994, a working group of ICAO's Air Navigation Commission prepared a working paper on the upper age limits for flight crewmembers. The group, acknowledging the lack of medical statistical information, recommended that the age limit not be changed. Some countries such as France and Germany have an Age 60 Rule similar to the United States, while other countries such as the United Kingdom and Switzerland have adopted rules that allow pilots to fly after their 60th birthdays. If foreign airlines operate in the U.S., the FAA requires that the carrier adhere to the ICAO standard. In addition, the Joint Aviation Authorities (JAA) in Europe has proposed to harmonize the European rule to allow pilots who have not reached the age of 65 to operate in multi-pilot operations, provided no more than one pilot in the cockpit is over the age of 60. (JAR–FCL 2–1.11.)

Accordingly, not all countries have dealt with the issue of age limitations in the same manner, and for the reasons discussed elsewhere in this Disposition, the FAA has determined that the Age 60 Rule should be maintained in the United States.

V(d). Inconsistency With Other Regulations

Many commenters point out that pilots who operate under other than part 121 can fly after reaching age 60. They believe, therefore, that there should not be an age limit in part 121 operations.

FAA Response: The Age 60 Rule, like many other safety rules that apply to part 121 operations and not others, provides an increased level of safety appropriate to the operations conducted under part 121. The Commuter Rule proposal, as discussed above, looked at enhancing the level of safety for certain operations now under part 135. The FAA proposed one age limit on all pilots employed in part 121 operations, including those pilots currently employed in the part 135 operations covered by the proposal (60 FR 16230; March 29, 1995). The final Commuter Rule is being issued concurrently with this Disposition.

The FAA's statute requires the Administrator to give consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to make rules appropriate to the differences between air transportation and other air commerce. The Age 60 Rule is responsive to this mandate.

V(e). Pilot Union Membership

Many commenters state that pilot unions and employers may favor retirement at age 60 and write this into their labor contracts, but pilots who do not belong to those unions should not be penalized by actions that benefit union members. In addition, commenters state that some union members disagree with their union's position and they question their union's motivation for changing their position on the question of raising the age limit.

FAA Response: The Age 60 Rule is a safety rule that must apply to all pilots, regardless of union membership or labor contracts. The FAA cannot speculate as to the basis for union or management positions.

V(f). Experienced Pilot Shortages

Many commenters state that new pilots have a shorter time for gaining experience as second and first officer because of the rapid expansion of the major carriers and the increasing numbers of two-person cockpits. The commenters state that carriers that allow rapid promotion to Captain have poor safety records. Commenters also point out that industry forecasts project a shortage of pilots between 1995 and 2010 due to sharply reduced military pilot training, thus the airlines' most experienced pilots should be retained.

FAA Response: The FAA has not been apprised of data that shows that the Age 60 Rule will create a shortage of experienced pilots and thereby compromise safety.

VI. Conclusion

While the FAA considered each comment in its evaluation of the Age 60 Rule, for the most part the comments made assertions and expressed opinions but did not provide the FAA with additional facts or analysis sufficient to support changing the rule. The FAA's overriding regulatory concern is safety. Before issuing a regulation, the FAA must be satisfied that it will maintain or raise the current level of safety.

The Civil Aviation Medical Association's (CAMA) comments are particularly relevant. CAMA noted that medical conditions are degraded by age and that the aging process accelerates with time. It took a neutral position as to the Age 60 Rule, however, stating that the basic question is one of public policy and determining how much risk is acceptable.

The only things that are clear from review of all of the comments and relevant literature is that there is no one obviously ''right answer'' discovered through scientific or medical studies,

and, as CAMA states, the basic question is one of public policy and determining how much risk is acceptable. The FAA must evaluate all the varied evidence that indicates what those risks are, and determine where the public interest lies. At this time, the FAA cannot be assured that raising the age 60 limit will maintain or raise the level of safety that the Age 60 Rule offers.

Although the Hilton Study provides useful information on accident rates for pilots as a function of their age, it does not provide a satisfactory basis for changing the Age 60 Rule.

Therefore, after carefully considering the written comments submitted to the docket, the comments presented at the public meeting, and analysis of the Hilton Study, the FAA has determined for the reasons stated above that no change to the Age 60 Rule should be proposed at this time.

Issued in Washington, DC on December 11, 1995.

William J. White,

Acting Director, Flight Standards Service.

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Part III

Department of Transportation

Coast Guard

46 CFR Part 26 et al.

Adoption of Industry Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 26, 31, 32, 34, 35, 38, 54, 56, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 190, 193, and 196

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RIN 2115–AF09

Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: As part of the President's Regulatory Reinvention, the Coast Guard is proposing to amend its regulations governing both inspected and uninspected commercial vessels by removing or revising obsolete and unnecessary provisions and incorporating industry standards and practices. The provisions proposed for removal or revision are categorized as: Regulations discussing equipment which is no longer manufactured or used; Regulations imposing requirements that are repeated in another, more useful section; Regulations imposing requirements which make a negligible contribution to shipboard safety; Regulations which can be replaced by an appropriate industry consensus standard or practice; and, Regulations which merely repeat statutory language.

The Coast Guard expects these amendments will reduce the regulatory burden to the maritime industry, reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: Comments must be received not later than February 20, 1996. A public meeting will be held on February 9, 1996 to discuss this rulemaking.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A public meeting scheduled for February 9, 1996 will be held in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at Room 1300, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Design and Engineering Standards Division (G–MMS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2206—LCDR R. K. Butturini, Project Manager; LTJG Jaqueline Twomey, Project Engineer; Ms. Shereen Bell, Project Assistant. Regulations and Administrative Law Division (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1534—LT Rachel Goldberg, Project Counsel,

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–027) and the specific section of this proposed rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

A public meeting was held on April 20, 1995 (60 FR 16423) to discuss Coast Guard regulations and the regulatory process. The relevant comments received at the hearing or in writing have been considered for the changes included in this document. The Coast Guard will hold another public meeting on February 9, 1996 from 9 a.m. to 3 p.m. to discuss these proposed rules and to solicit other suggestions or comments for regulatory reform. The meeting will be held at the site indicated in the **ADDRESSES** section. Comments received at the hearing will be considered as part of the review of this proposal and the Coast Guard may change this proposal in view of these comments.

Background and Purpose

This proposal has been sparked by several recent calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and,

(4) Expanding efforts to promote consensual rulemaking.

The President's memorandum coincides with U.S. maritime industry requests for greater alignment of Coast Guard regulations with international marine safety standards to reduce cost disadvantages incurred by the U.S. maritime industry and thereby improve the competitiveness of the U.S. industry. The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides further justification for identifying excessive requirements in Coast Guard regulations and for streamlining government processes. Also, the Coast Guard recognizes the need to explore regulatory reform where it provides an opportunity to reprogram Coast Guard resources to focus more attention on human factors and port state control activities to ensure other nations are conscientiously implementing international safety agreements.

The Coast Guard held a public meeting on April 20, 1995, announced in the March 30, 1995 Federal Register (60 FR 16423), to discuss the Coast Guard's regulatory development process and the President's Regulatory Review Initiative. During the public meeting, the Coast Guard announced its goals of purging obsolete and outdated regulations and eliminating any Coast Guard induced differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of other responsible foreign nations. In the May 31, 1995 Federal Register (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish all of these goals, the Coast Guard is considering alternative compliance methods, examining ways to make existing regulations more efficient and comparing U.S. marine safety regulations with American Bureau of Shipping (ABS) Rules and the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS '74). An initial rulemaking removing or amending obsolete and unnecessary provisions was published in the September 18, 1995 Federal

Register (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as removal of the requirements for nuclear vessels, ocean incinerator ships and ocean thermal energy conversion facilities and plantships. This proposal removes or amends obsolete or unnecessary regulations of a more significant nature and seeks to incorporate industry consensus standards and practices. The broader scope of this proposal and the nature of the proposed changes, when compared to the previous rulemaking, make increased public involvement desirable.

In compiling the list of CFR sections included in this proposed rule, the Coast Guard did not consider parts of Title 46 Code of Federal Regulations (46 CFR) that are under review as part of other, ongoing regulatory projects.

In this proposal, sections of the CFR were identified for removal or revision by comparing the section subject matter to the following list of selection criteria:

(a) Equipment discussed in a section is no longer manufactured or used:

(b) Requirements imposed by a section are repeated in another section;

(c) Requirements imposed by a section make a negligible contribution to shipboard safety;

(d) An appropriate industry consensus standard or practice exists which can be referenced instead of publishing detailed requirements in a regulation; or,

(e) The text of a regulation merely repeats statutory language.

Discussion of Proposed Rules

The following discussion summarizes the changes proposed by this rule:

1. The requirement addresses equipment that is no longer manufactured or used. The following sections are being removed or revised because they impose requirements for equipment that is no longer manufactured, that is technologically obsolete, or is no longer used in the marine industry.

Section 31.10–15(a) of Title 46 CFR contains requirements for nuclear vessels. This section was inadvertently omitted from an earlier rulemaking entitled Removal of Obsolete and Unnecessary Regulations (60 FR 48044) which focused on removing regulations for nuclear vessels, ocean incinerator vessels and ocean thermal energy conversion facilities and plantships. Therefore, this section which pertains to nuclear vessels is proposed for removal.

Section 34.05–5 and Subparts 34.13, 76.13 and 95.13 of Title 46 CFR contain requirements for steam smothering systems used for fire fighting purposes. The Coast Guard has prohibited installation of steam smothering systems on vessels since 1962. Existing steam smothering systems may be retained as long as they are kept in good condition to the satisfaction of the Officer in Charge, Marine Inspection. As no new installation of steam smothering systems are allowed and the designs of existing installations have already been approved, the design requirements for steam smothering systems are no longer necessary and are proposed for removal. The Coast Guard is retaining the regulations pertaining to testing and inspection of installed systems.

Subparts 35.70, 78.80, 97.70 and § 108.613 of Title 46 CFR contain requirements for power-operated industrial trucks. Power-operated industrial trucks have historically been used on break-bulk ships for handling cargo in the holds. Only 66 U.S. flag break-bulk ships are currently inspected by the Coast Guard. Well over half of these ships are maintained by the Maritime Administration (MARAD), but are not operating. Of MARAD's ships, only 7 will eventually carry power-operated industrial trucks as ship's equipment. On the remaining, privately owned break-bulk ships, few trucks are still carried as ship's equipment because dockside trucks are readily available. Trucks are also used on mobile offshore drilling units (MODUs) to move palletized stores such as bagged cement. Efficient cargo handling systems are increasingly replacing trucks aboard MODUs for this purpose. The demand for faster loading methods and the evolution of container ships, lighter-aboard ships (LASH) and roll-on/roll-off (RORO) ships has also reduced the use of power-operated industrial trucks. Additionally, there have been no reported accidents involving power-operated industrial trucks in the last fifteen years. Therefore, regulations for power-operated industrial trucks are no longer necessary and are proposed for removal.

Sections 32.15–10, 77.27–1, 96.27–1 and 167.40–20 of Title 46 CFR contain requirements for sounding equipment, including deep-sea hand leads. Reliable, inexpensive electronic sounding equipment and position fixing equipment are available from numerous manufacturers. It is unlikely that a hand lead would be necessary to determine the water depth. Therefore, the requirements for deep sea hand leads are not necessary and are proposed for removal.

Section 32.02–5 and Subparts 78.35, 97.33 and 196.33 require cable travelers between fore and aft deck houses separated by more than 46 m (150 ft) to protect crewmembers needing to cross the weather decks. Cable travelers have been replaced by raised fore and aft bridges and side tunnels as safer means of moving between the deckhouses. Additionally, modern vessel designs have abandoned the two deck house arrangement in favor of a single deckhouse. Therefore, these sections are being revised to remove the requirement for installation of cable travelers between separated deckhouses and merely require a fixed means of facilitating movement between both ends of the vessel.

Sections 34.05–15, 76.05–30, 95.05–20, 167.45–40, 193.05–20 and Subpart 34.55 of 46 CFR require sand, sawdust impregnated with soda or other appropriate dry materials, and a scoop or shaker for distribution, to be located in the machinery spaces for fire fighting purposes. Sand is inferior to other, common fire fighting means, such as portable extinguishers, and this burdensome requirement is no longer appropriate. Therefore, regulations requiring sand in the engine room are proposed for removal.

Subparts 35.12, 78.53, 97.43, 196.43 and Section 167.65–50 of 46 CFR require instructions for the use of breeches buoys. Modern communications and lifesaving equipment have made the use of breeches buoys for lifesaving purposes obsolete. Therefore, the requirement for an instruction placard for the use of breeches buoys is no longer necessary and these sections are proposed for revision to remove this requirement.

Sections 35.30–45, 72.05–60, 167.40–35 and 169.321 and Subparts 78.75, 97.60 and 196.60 of Title 46 CFR contain requirements for motion picture film. Subpart 78.75 also contains a requirement that motion picture projectors comply with the requirements in the electrical engineering regulations. With the exception of large passenger vessels, video cassette recorders and televisions have replaced motion picture projectors on most vessels. Large passenger vessels use motion picture projectors in their movie theaters. Slow-burning film is the only type of film currently available in reel format for use with movie projectors. Section 111.89–1 of Title 46 in the electrical engineering regulations requires all motion picture projectors to meet Article 540 of the National Electrical Code. Therefore, as the risks previously associated with motion picture film no longer exist, the regulations for motion picture film are not necessary and are proposed for removal.

Sections 180.403 and 167.45–55 of Title 46 CFR allow the installation of water spray systems for fire fighting purposes in boiler spaces of mobile offshore drilling units (MODU) and public nautical school ships. Other fire fighting media, such as carbon dioxide, have shown to be more effective, reliable and practical than water spray systems and no MODU or public nautical school ship currently uses a water spray system in a boiler space for fire fighting purposes. Therefore, these provisions are not necessary and are proposed for removal.

Subpart 160.018 of Title 46 CFR contains specifications for rigid liferafts. Rigid liferafts are no longer manufactured for use in the marine industry. Therefore, the specifications for rigid liferafts in 46 CFR 160.018 are no longer necessary and are proposed for removal.

Subpart 160.034 of Title 46 CFR contains specifications for lifeboat hand propelling gear. Hand propelled lifeboats have largely been replaced by reliable, engine-driven lifeboats and are no longer manufactured for use in the marine industry. Therefore, the specifications for hand propelling gear in 46 CFR 160.034 are no longer necessary and are proposed for removal.

Section 164.016 of Title 46 CFR contains specifications for microcellular nylon used in the construction of lifesaving equipment. Microcellular nylon has been replaced by more effective materials and is no longer manufactured for use in Coast Guard approval lifesaving equipment. Therefore, the specifications for microcellular nylon are no longer needed and are proposed for removal.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 31.10–15	Revision	Nuclear vessels.
§ 32.02–5	Revision	Cable traveler.
§ 32.15–10	Revision	Deep-sea hand leads.
§ 34.05–5	Revision	Steam smothering systems.
§ 34.05–15	Removal	Sand in the engineroom.
Subpart 34.13	Revision	Steam smothering systems.
Subpart 34.55	Removal	Sand in the engineroom.
Subpart 35.12	Revision	Breeches buoy placard.
§ 35.30–45	Revision	Motion picture film.
Subpart 35.70	Removal	Power-operated industrial trucks.
§ 76.05–60	Removal	Motion picture film.
§ 76.05–20	Revision	Fixed firefighting systems.
§ 76.05–30	Removal	Sand in the engineroom.
Subpart 76.13	Revision	Steam smothering systems.
§ 77.27–1	Revision	Deep-sea hand leads.
Subpart 78.35	Revision	Cable traveler.
Subpart 78.53	Revision	Breeches buoy placard.
Subpart 78.75	Removal	Motion picture film.
Subpart 78.80	Removal	Power-operated industrial trucks.
§ 95.05–10	Revision	Fixed firefighting systems.
§ 95.05–20	Removal	Sand in boiler rooms.
Subpart 95.13	Revision	Steam smothering systems.
§ 96.27–1	Revision	Deep-sea hand leads.
Subpart 97.33	Revision	Cable traveler.
Subpart 97.43	Revision	Breeches buoy placard.
Subpart 97.60	Removal	Motion picture film.
Subpart 97,70	Removal	Power-operated industrial trucks.
§ 108.403	Revision	Water spray systems.
§ 108.613	Removal	Power-operated industrial trucks.
Subpart 160.018	Removal	Rigid liferafts.
Subpart 160.034	Removal	Lifeboat hand propelling gear.
Subpart 164.016	Removal	Microcellular nylon.
§ 167.40–20	Revision	Deep-sea hand leads.
§ 167.40–35	Removal	Motion picture film.
§ 167.45–40	Revision	Sand in enginerooms.
§ 167.45–55	Revision	Water spray systems.
§ 167.65–50	Revision	Breeches buoy placard.
§ 169.321	Removal	Motion picture film.
§ 193.05–20	Removal	Sand in boiler rooms.
Subpart 196.33	Revision	Cable traveler.
Subpart 196.43	Revision	Breeches buoy placard.
Subpart 196.60	Removal	Motion picture film.

2. The requirement is repeated in another section. The following provisions are being removed or revised because the requirements are repeated in other, more useful locations in Title 33 CFR or Title 46 CFR.

Subparts 32.95, 78.85, 97.75, 196.18 and 196.75 and Section 109.583 of Title 46 CFR contain identical language regarding the requirement that certain vessels operate in accordance with the requirements of the Federal Water Pollution Control Act (FWPCA), as amended, the Oil Pollution Act (OPA), 1961, as amended and Parts 151, 155 and 156 of Title 33 CFR. However, each of the requirements cited contain language regarding their applicability. Therefore, the sections of Title 46 CFR which merely restate the applicability of the FWPCA, OPA and Title 33 CFR are not necessary and are proposed for removal.

Sections 35.20–25 and 167.65–1 and Subparts 78.25, 97.23 and 196.23 of Title 46 prohibit carrying any light not required by law that will interfere with

distinguishing signal lights. However, Rule 20 of both the Inland and International Rules of the Road published in 33 U.S.C. 2020 and 33 CFR 81, Appendix A, respectively, contains the same requirement. It is more logical to retain requirements pertaining to signal lights in the Rules of the Road. Therefore, the sections of Title 46 CFR prohibiting carrying lights that interfere with signal lights are not necessary and are proposed for removal.

Sections 35.20–40, 78.21–1, 97.19–1 and 196.19–1 of Title 46 CFR require ocean and coastwise vessels over 1600 gross tons to display maneuvering information on a fact sheet in the pilothouse. These sections include instructions for validating the information on the fact sheet after the vessel begins operating. Section 164.35 of Title 33 CFR also contains a requirement to display maneuvering information on a fact sheet in the pilothouse for vessels over 1600 gross tons on all navigable waters of the U.S.

The intent of both Title 33 CFR and Title 46 CFR is to provide information about the vessel's maneuvering characteristics for use in piloting waters. However, there are slight differences in the language of the requirements. Also, the requirement to display maneuvering information in Title 33 CFR and Title 46 CFR apply to some of the same vessels, but some vessels are only covered by one title. Under the current regulations, both requirements apply to an oceangoing U.S. vessel entering a U.S. port, resulting in a conflict between Title 33 CFR and Title 46 CFR.

As the information required to be displayed in Title 33 CFR and Title 46 CFR is similar and the purpose is the same, the requirement need not be printed in both locations. It is more useful and consistent to retain the description of the maneuvering information required in the navigation safety regulations of Title 33 CFR. Therefore, this proposal, if adopted, would remove paragraphs repeating the maneuvering information to be displayed from Title 46 CFR and retain the instructions in Title 46 CFR for validating the maneuvering information with an added reference to Title 33 CFR.

Section 56.50–100 of Title 46 CFR merely contains a one sentence reference to Subpart 58.30 of Title 46 CFR for fluid power and control system requirements. Subpart 58.30, Fluid Power and Control Systems, contains the detailed requirements. Therefore, § 56.50–100 is not necessary and is proposed for removal.

Sections 92.01–13 and 190.01–13 of Title 46 CFR contain requirements for the design and operation of sliding watertight door assemblies on cargo and miscellaneous vessels and oceanographic research vessels. Section 170.270 of the subdivision and stability regulations in Title 46 CFR contains identical requirements. The requirements for sliding watertight doors are included in Part 170 because the subdivision and stability regulations apply to all vessels inspected under Title 46, including cargo and miscellaneous vessels and oceanographic research vessels. For example, the passenger vessel and tank vessel regulations do not contain specific provisions for the design and operation of sliding watertight door assemblies because § 170.270 applies. Therefore, repeating the requirements for the design and operation of sliding watertight door assemblies in §§ 92.01–13 and 190.01–13 is not necessary and these provisions are proposed for removal.

In the following list of sections proposed for removal or revision, the citation to the sections where duplicate requirements are being retained is indicated in square brackets below the section being removed or revised.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
Subpart 32.95 [33 CFR Subchapter O]	Removal	Oil pollution.
§ 35.20–25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 35.20–40 [33 CFR 164.35]	Revision	Maneuvering characteristics.
§ 56.50–100 [§ 58.30]	Removal	Fluid power and control systems.
§ 78.21–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 78.25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 78.85 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 92.01–13 [46 CFR Subchapter S, Subpart H] [33 CFR 164.35]	Removal	Watertight doors.
§ 97.19–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 97.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 97.75 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 109.583 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 167.65–10 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 190.01–13 [46 CFR Subchapter S, Subpart H]	Removal	Watertight doors.
Subpart 196.18 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 196.19–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 196.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 196.75 [33 CFR Subchapter O]	Removal	Pollution prevention.

3. *The requirement does not improve shipboard safety.* The following sections are being removed or revised because they make no significant contribution to shipboard safety. This list includes provisions which are typically exceeded by industry voluntarily, regulations which have outlived their usefulness and requirements which result in inefficient administrative procedures.

Sections 32.05–5, 78.47–67, 97.37–45, 169.742 and 196.37–45 of Title 46 CFR contain requirements for marking fire hose and fire axes with the vessel's name. Emergency equipment is typically marked with instructions or identifying symbols, such as the ''E'' on emergency lights, to aid in its identification and use. Lifesaving equipment that floats and could be discovered during a search is marked with the vessel's name to help identify the vessel in the event of a sinking. However, fire hose and fire axes have no need for either of these types of markings. These pieces of equipment do not float and are not amenable to marking with instructions. Therefore, the requirement to mark fire hoses and fire axes with the vessel's name is not necessary and is proposed for removal.

Section 35.01–5 and Subparts 32.40, 72.20, 92.20, 167.50, 168.15 and 190.20 of Title 46 CFR contain requirements for on-board crew accommodations. In some cases, the requirements contained in these sections are unnecessarily detailed or exceed the requirements of the International Labor Office Merchant

Shipping (Minimum Standards) Convention, 1976 (ILO 147) to which the United States is signatory. For example, ILO 147 requires a hospital space be provided for tankships over 500 gross tons carrying a crew of 15 persons or more and on a voyage of over three days duration. Current § 32.40–50 requires a hospital space for all tankships carrying a crew of 12 persons or more and on a voyage of over three days duration.

The changes proposed by this rulemaking would remove or revise those sections of the regulations that are unnecessarily detailed or exceed the requirements of ILO 147 in order to make the regulations more concise and consistent with the international standard for on-board crew accommodations.

Sections 35.10–5 and 35.20–30 of Title 46 CFR discuss the officer in command's responsibility to conduct drills and the prohibitions against unauthorized lights, flashing blinding lights and unauthorized whistling. Section 35.25–1 of Title 46 CFR discusses the chief engineer's responsibility to examine the boilers and report their condition. Additionally, Sections 78.57–1, 97.47–1 and 167.65–15 of Title 46 CFR require mariners to comply strictly with routing instructions issued by competent naval authorities. Each of these sections include phrases to indicate that the master or the other licensed officers of a vessel may be held liable against their licenses in suspension and revocation proceedings for failure to comply with the provisions of these sections. Phrases of this type are inconsistent with the President's memorandum of March 4, 1995 directing the federal agencies to focus on results rather than process and punishment and do not contribute to shipboard safety. The authority to proceed in suspension and revocation proceedings against licensed or certificated mariners that fail to obey a law or regulation is explained in Part 5 of this chapter. Reiterating a mariner's liability in other subchapters is not necessary. Therefore, to meet the Coast Guard's goal of focusing on results instead of process and punishment this proposal, if adopted, would remove or revise sections that restate mariners' liability for failure to obey laws or regulations, while retaining the prohibition against the underlying conduct.

Sections 35.20–15 and 167.65–30 and Subparts 78.20, 97.17 and 196.17 of Title 46 CFR specify the words *Right Rudder* and *Left Rudder* be used when it is intended that the wheel, rudder blade and the head of the ship move to the right or left, respectively. Specifying the direction of the wheel, rudder or ship intended by the commands *Right Rudder* and *Left Rudder* is a detail that is not necessary for professional seamen. Proper steering orders are ingrained in the commercial maritime industry culture and need not be repeated in the regulations. Therefore, these regulations are not necessary and are proposed for removal.

Sections 61.05–5 and 61.30–5 of Title 46 CFR assign responsibilities to the chief engineer to prepare the boilers and thermal fluid heaters for inspection. Preparing machinery for inspection reduces the time needed to conduct the required inspections and determine the condition of the machinery. It is a matter of convenience for the vessel and the attending marine inspectors or classification society surveyors to have the machinery prepared in advance, but is not a safety issue. Not preparing machinery for inspections has no impact on safety because all required inspections must eventually be conducted to the satisfaction of the attending inspectors or surveyors. Therefore, regulations assigning the responsibility to prepare machinery for inspection to the chief engineer are proposed for removal.

Sections 54.01–1, 54.01–3 and 54.01–5 and Table 54.01–5 of Title 46 CFR reference the standards of the Tubular Exchanger Manufacturers Association (TEMA) and the American Society of Mechanical Engineers (ASME) Code for Boilers and Pressure Vessels (ASME Code) for the construction of heat exchangers. Comments received from heat exchanger manufacturers and shipyards indicate that referencing both the TEMA and ASME standards has created confusion. The ASME Code is the primary industry standard for pressure vessels of all types and is extensively referenced in the regulations. The ASME Code is comprehensive and includes updated requirements for design and construction of the heat exchanger components for which a reference to TEMA standards was previously necessary. The ASME Code requirements are equivalent to TEMA requirements. Heat exchangers built solely in accordance with the ASME Code have demonstrated their suitability for shipboard use. Referencing only the ASME Code will result in simplified regulations and less confusion. Therefore, the regulations referencing the TEMA standards are no longer necessary and are proposed for removal.

Part 153 of Title 46 CFR contains the requirements for issuance of a Certificate of Compliance (COC) and Subchapter O Endorsement (SOE). Under the existing regulations, a COC and SOE are issued by the Coast Guard to a foreign chemical tanker registered with a nation signatory to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Issuance of the COC and SOE are based primarily on a review of the vessel's plans and possession of a valid Certificate of Fitness (COF) issued by the flag state or an authorized third party.

The process to obtain a COC and SOE is initiated when a series of documents are submitted to the Coast Guard for review. The required submission of these documents to both the Coast Guard's Marine Safety Center (MSC) and the cognizant Officer in Charge, Marine Inspection (OCMI) often results in unnecessary delays in obtaining a COC and SOE. Also, under current practices, after the COC and SOE have been issued, if a Coast Guard marine inspector discovers that the COF has been reissued by the flag state or its authorized third party, the COC becomes invalid and cargo operations have to be stopped until the MSC reviews the new COF and issues a new SOE.

A new proposed procedure would make the Coast Guard's regulations more consistent with actual practice. Due to the large number of cargoes typically authorized under a COF, currently the MSC does not conduct a detailed review of the majority of a vessel's plans. Instead, the MSC concentrates on identifying cargoes prohibited from bulk carriage in U.S. waters and those cargoes for which the U.S. has special requirements. The MSC accepts a valid COF issued by the flag state or its authorized third party as documentation that the vessel complies with the applicable international codes for carriage of bulk chemicals. These codes are the Bulk Chemical Code (BCH Code) and the International Bulk Chemical Code (IBC Code) developed by the International Maritime Organization. Compliance with these codes is mandatory for any vessel whose flag state is signatory to MARPOL 73/78. Under this proposal, it would be only those chemical tankers whose flag state is not signatory to MARPOL 73/78 that would require a detailed plan review by the MSC to be issued an SOE. Following plan review, the MSC would issue an SOE to these vessels with the notation that the flag state is not signatory to MARPOL 73/78.

Therefore, this proposal, if adopted, would amend the review and issuance

process found in 46 CFR Part 153 to allow the OCMI to issue the COC and SOE without the MSC's involvement for those vessels whose flag states are signatory to MARPOL 73/78. This proposal would also enable the SOE to remain valid as long as the COF is valid even if the COF is revised. The burden on the Coast Guard would also be reduced through streamlined administrative procedures.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
Tank Vessels:		
§ 32.05–5	Revision	Equipment marking.
Subpart 32.40	Revision	Accommodations.
§ 35.01–5	Revision	Accommodations.
§ 35.10–5	Revision	Emergency drills.
§ 35.20–15	Revision	Steering orders.
§ 35.20–30	Revision	Blinding lights.
§ 35.20–35	Revision	Unnecessary whistling.
§ 35.25–1	Revision	Examination of boiler and machinery by engineer.
§ 35.40–40	Revision	Equipment marking.
Pressure Vessels:		
§ 54.01–1	Revision	Heat exhangers.
§ 54.01–3	Removal	Heat exhangers.
§ 54.01–5	Revision	Heat exhangers.
Inspectins and Examinations:		
§ 61.05–5	Revision	Preparing boilers for inspection.
§ 61.30–5	Revision	Preparing thermal fluid heater for inspection.
Passenger Vessels:		
Subpart 72.20	Revision	Accommodations.
Subpart 78.20	Removal	Steering orders.
§ 78.47–67	Removal	Equipment marking.
§ 78.57–1	Revision	Routing instructions.
Cargo and Miscellaneous Vessels:		
Subpart 92.20	Revision	Accommodation.
Subpart 97.17	Removal	Steering orders.
§ 97.37–45	Removal	Equipment marking.
§ 97.47–1	Revision	Routing instructions.
Hazardous Cargoes:		
Part 153	Revision	Certificate of Compliance procedures.
Public School Ships:		
Subpart 167.50	Revision	Accommodations.
§ 167.55–5	Revision	Special Markings.
§ 167.65–15	Revision	Routing instructions.
§ 167.65–30	Removal	Steering orders.
Civilian Nautical School Ships:		
Subpart 168.15	Revision	Accommodations.
Sailing School Vessels:		
§ 169.742	Removal	Equipment marking.
Oceanographic Research Vessels:		
Subpart 190.20	Revision	Accommodations.
Subpart 196.17	Removal	Steering Orders.
§ 196.37–45	Removal	Equipment marking.

4. *An appropriate industry standard or practice exists which can be referenced instead of publishing detailed requirements in the regulations.* The Coast Guard has been systematically replacing detailed specifications in the regulations with industry consensus standards for over 20 years. To date, over 250 regulatory provisions have been replaced with adopted industry standards. Incorporation of industry standards saves time and resources for both the Coast Guard and industry by streamlining the shipboard equipment acceptance process.

Sections 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10 and 193.10–90 of Title 46 CFR contain requirements for fire hose nozzles that are approved under 46 CFR 162.027. In 1994, the Coast Guard helped U.S. nozzle manufacturers develop an American Society for Testing and Materials (ASTM) standard for fire fighting nozzles—ASTM F 1546–94, Standard Specification for Marine Fire Fighting Nozzles. The standard was developed for modern variable flow or variable pressure nozzle with the expectation that it would eventually be incorporated into the regulations. Testing conducted by the Coast Guard Research and Development Center in 1988 demonstrated these nozzles are superior to the currently approved all-purpose nozzles. Two of the tested models were issued Coast Guard approvals in 1990. Variable flow or variable pressure nozzles are used by virtually every shoreside fire department in the United States. Incorporation of this standard will make a superior product with a long, successful service history available to the marine industry. Therefore, this proposal, if adopted, would replace current specifications for fire hose nozzles contained in Subpart 162.027

with a reference to ASTM F 1546–94 and would allow the use of nozzles that meet the new Subpart 162.027 in lieu of nozzles previously approved under Subpart 162.027.

Sections 56.30–35 and 56.30–40 of Title 46 CFR contain regulations for gasketed mechanical couplings and mechanically attached fittings, respectively. In 1993, the Coast Guard and ASTM developed ASTM standards F 1387–93, Standard Specification for Performance of Mechanically Attached Fittings, and F 1476–93, Standard Specification for Performance of Gasketed Mechnical Couplings for Use in Piping Applications, with the expectation that they would eventually be incorporated into the regulations in lieu of §§ 56.30–35 and 56.30–40. This proposal, if adopted, would incorporate F 1387F–93 and F 1476–93 into the regulations.

Section 61.20–17 of Title 46 CFR contains the requirements for tailshaft examination intervals. The current requirements for tailshaft examination intervals are based on the type of lubricant in the bearing lubrication system. With some exceptions, water-lubricated tailshafts must be drawn and examined at each drydocking. Oil-lubricated bearings need not be drawn and examined if the bearing clearances are taken during drydocking, the inboard seals are examined, the lubricating oil is analyzed and nondestructive testing is conducted on the connection between the propeller to the tailshaft. The differences in the scope and frequency of inspection are due to the non-corrosive properties of oil. Consequently, the use of an oil-lubricated tailshaft can translate into substantial savings during drydock periods. However, a potential drawback is liability for oil released from leaky seals. As a result, industry demand has spurred development of water-miscible, environmentally safe, non-corrosive lubricants.

The Coast Guard supports the development and use of non-polluting lubricants and has evaluated the means for a manufacturer to demonstrate a lubricant's equivalency to oil, based on the lubricant's non-corrosive properties, for purposes of the tailshaft inspection interval. Under this proposal, if adopted, a water-miscible lubricant tested in accordance with ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, may be considered equivalent to oil for the purposes of the tailshaft inspection interval. Therefore, this proposal, if adopted, would incorporate ASTM D 665–92 into the regulations and add appropriate text into § 61.20–17 explaining the procedures for accepting water-miscible lubricants as equivalent to oil. Additionally, this proposal, if adopted, would clarify the purpose of the tailshaft lubricating oil analysis by explaining that the analysis is to determine the presence of bearing material or other contaminants.

Section 38.25–10 of Title 46 CFR contains the inspection requirements for safety relief valves installed on pressure vessel type cargo tanks used in the carriage of liquefied petroleum gas. Under the current regulations, safety relief valves must be tested and adjusted, if necessary, every four years. The ABS Rules require testing and adjustment every five years. The ABS Rules, with the longer testing interval, have shown to be adequate by the satisfactory performance of safety relief valves on non-U.S. vessels classed by ABS. The Coast Guard has amended the inspection intervals for vessel drydockings and for various pieces of shipboard equipment to agree with the inspection intervals in international standards and class society rules. These amendments have been made after consideration for any possible degradation in safety to allow major pieces of equipment to be tested on a cycle that coincides with the normal drydock schedule for the convenience of the vessel owner, class society and the Coast Guard. Therefore, this proposal, if adopted, would change the testing interval for safety valves installed on pressure vessel type cargo tanks from four years to five years to be consistent with international standards and classification society rules.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 34.10–10	Revision ...	Fire hose nozzles.
§ 34.10–90	Revision ...	Fire hose nozzles.
§ 38.25–10	Revision ...	Safety relief valves.
§ 56.01–2	Revision ...	Incorporation by reference.
§ 56.30–35	Revision ...	Gasketed mechanical couplings.
§ 56.30–40	Revision ...	Mechanically attached fittings.
Subpart 61.03	New	Incorporation by reference.
§ 61.20–17	Revision ...	Tailshaft inspections.
§ 76.10–10	Revision ...	Fire hose nozzles.
§ 76.10–90	Revision ...	Fire hose nozzles.
§ 95.10–10	Revision ...	Fire hose nozzles.
§ 95.10–90	Removal ..	Fire hose nozzles.
§ 108.425	Revision ...	Fire hose nozzles.
Subpart 162.027.	Revision ...	Fire hose nozzles.
§ 167.45–40	Revision ...	Fire hose nozzles.
§ 193.10–10	Revision ...	Fire hose nozzles.
§ 193.10–90	Revision ...	Fire hose nozzles.

5. Statutory language repeated. The regulatory text of the following provisions repeats language or restates requirements from self-executing statutes without any additional regulatory provisions.

Section 26.15–1 of Title 46 CFR repeats the statutory language of 46 U.S.C. 527e authorizing the Coast Guard to board numbered, uninspected commercial vessels. Section 527e of Title 46 U.S.C. was repealed on August 10, 1971 (P.L. 92–75; 85 Stat. 228). The authority for the Coast Guard to conduct boardings on uninspected vessels remains in Title 14 U.S.C. 89. Therefore, § 26.15–1 is no longer needed and is proposed for revision.

Sections 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3 and 196.35–10 of Title 46 CFR either repeat statutory language or paraphrase statutory requirements for making logbook entries. Subparts 78.03, 97.03 and 196.03 of Title 46 CFR repeat the possible consequences of a violation of the provisions of Title 46 CFR and mariners' liability under the suspension and revocation proceedings. Sections 167.65–3 and 196.27–10 of Title 46 CFR repeat the statutory language regarding negligent operations of a vessel.

Regulations which do not add meaning or additional requirements to self-executing statutes are not useful. Therefore, regulations which only repeat language or summarize requirements from self-executing statutes are not necessary and are proposed for removal.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 26.15–1	Revision ...	Boarding by Coast Guard.
§ 35.07–5	Revision ...	Logbook entries.
§ 35.07–15	Removal ..	Logbook entries.
Subpart 78.03	Removal ..	Statutory penalties.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 78.37–3	Revision ...	Logbook entries.
Subpart 97.03	Removal ..	Statutory penalties.
§ 97.35–3	Revision ...	Logbook entries.
§ 97.35–10	Removal ..	Logbook entries.
§ 167.65–3	Removal ..	Negligent operations.
Subpart 196.03	Removal ..	Statutory penalties.
§ 196.27–10	Removal ..	Negligent operations.
§ 196.35–3	Revision ...	Logbook entries.
§ 196.35–10	Removal ..	Logbook entries.

Incorporation by Reference

The following material would be incorporated by reference:

American Society for Testing and Materials (ASTM):

Standard Specification for Performance of Mechanically Attached Fittings, F 1387–93—§§ 56.01–2, 56.30–35

Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications, F 1476–93—§§ 56.01–2, 56.30–40

Standard Specification for Marine Fire Fighting Nozzles, ASTM F 1546–93—§§ 162.027–1, 162.027–2, 162.027–3

Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in §§ 56.01–2 and 162.027–1.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order, nor has it been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Assessment is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This proposed rule will have no economic impact on small entities because it amends portions of regulations that: (1) Are purely administrative; (2) Do not reflect common marine industry practice; (3) Do not have general applicability; or, (4) Are repeated in other sections.

Therefore, the Coast Guard finds that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule imposes on the public no new or added requirements for collecting information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire Prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR Parts 26, 31, 32, 34, 35, 38, 54, 56, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 189, 190, 193, and 196 as follows:

PART 26—OPERATIONS

1. The authority citation for Part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277.; 49 CFR 1.46.

2. In § 26.15–1, paragraphs (a) and (b) are removed, paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

§ 26.15–1 May board at any time.

(a) To facilitate the boarding of vessels by the commissioned, warrant, and petty officers of the U.S. Coast Guard in the exercise of their authority, every uninspected vessel, as defined in 46 U.S.C. 2101(43), if underway and upon being hailed by a Coast Guard vessel, shall stop immediately and lay to, or shall maneuver in such a way as to permit the Coast Guard boarding officer to come aboard. Failure to permit a Coast Guard boarding officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided in law.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.10–15 [Amended]

4. In § 31.10–15, paragraph (a) is amended by removing the words ''and in the case of nuclear vessels, at least once every year''.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. The authority citation for Part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

6. Section 32.02–5 is revised to read as follows:

§ 32.02–5 Communication between deckhouses—TB/OCLB.

On all tank vessels where the distance between deckhouses is more than 46 m (150 ft), a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

§ 32.05–5 [Amended]

7. In § 32.05–5, the words ''fire hose, fire axes,'' are removed.

8. Section 32.15–10 is revised to read as follows:

§ 32.15–10 Sounding machines—T/OCL.

All mechanically propelled vessels in ocean or coastwise service of 500 gross tons and over, and all mechanically propelled vessels in Great Lakes service of 500 gross tons and over certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic deep-sea sounding apparatus.

9. Subpart 32.40 is revised to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

Sec.

32.40–1 Application—TB/ALL.
32.40–5 General—T/ALL.
32.40–10 Restrictions—T/ALL.
32.40–15 Location of crew spaces—T/ALL.
32.40–20 Arrangement of sleeping spaces—T/ALL.
32.40–25 Size of sleeping spaces—T/ALL.
32.40–30 Berths and lockers—T/ALL.
32.40–35 Wash spaces; toilet spaces; and shower spaces—T/ALL.
32.40–40 Messrooms—T/ALL.
32.40–45 Hospital spaces—T/ALL.
32.40–50 Miscellaneous accommodation spaces—T/ALL.
32.40–55 Heating requirements—T/ALL.
32.40–60 Inspect screens—T/ALL.
32.40–65 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.
32.40–70 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

§ 32.40–1 Application—TB/ALL.

(a) The provisions of this subpart, with the exception of § 32.40–70 and § 32.40–90, apply to all tankships of 100 gross tons and over constructed on or after June 15, 1987.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of § 32.40–70.

(c) Tankships of 100 gross tons and over constructed prior to June 15, 1987, must meet the requirements of § 32.40–90.

§ 32.40–5 General—T/ALL.

The accommodations provided for the crew, including both officers and

unlicensed members, on all tankships must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat and odors.

§ 32.40–10 Restrictions—T/ALL.

(a) There must be no direct communication between the accommodation spaces and any chainlocker, stowage, or machinery space, except through solid, close-fitted doors or hatches.

(b) No access, vent, or sounding tube from a fuel or oil tank may open into any accommodation space, except that accesses and sounding tubes may open into corridors.

§ 32.40–15 Location of crew spaces—T/ALL.

Crew quarters must not be located forward of a vertical plane located at five percent of the tankship's length aft of the stem at the designated summer load line. However, for tankships in other than ocean or coastwise service, this distance does not need to exceed 8.5 m (28 ft). For the purposes of this paragraph, the length defined in § 42.13–15 of Subchapter E (Load Lines) of this chapter is to be used. No section of the deckhead of the crew spaces may be below the deepest load line.

§ 32.40–20 Arrangement of sleeping spaces—T/ALL.

Each department head and watchstanding officer must be provided with a separate stateroom.

§ 32.40–25 Size of sleeping spaces—T/ALL.

(a) No sleeping space may berth more than four persons.

(b) Without deducting any furnishings used by the occupants, each sleeping space must have for each occupant—

(1) 2.78 m^2 (30 ft^3) of deck area: and

(2) 5.8 m^3 (210 ft^2) of volume.

(c) Each sleeping space must have at least 190 cm (75 in) of headroom over clear deck areas.

§ 32.40–30 Berths and lockers—T/ALL.

(a) Each person shall have a separate berth and not more than one berth shall be placed above another.

(b) Each berth must have a framework of hard, smooth, non-corrosive material.

(c) Each berth must be at least 68 cm (27 in) wide by 190 cm (75 in) long.

(d) The bottom of the lower berth must be at least 30 cm (12 in) above the deck. The bottom of an upper berth must be at least 76 cm (30 in) from the bottom of the berth below it and from the deck or any pipe, ventilating duct, or other overhead installation.

(e) Each person accommodated in a room shall be provided a locker.

(f) Each berth must have a berth light.

§ 32.40–35 Wash spaces: toilet spaces; and shower spaces—T/ALL.

(a) Each tankship must have enough public facilities to provide at least one toilet, one shower, and one washbasin for each eight persons who occupy sleeping spaces that do not have private or semi-private facilities.

(b) Each public toilet space and washing space must be convenient to the sleeping space that it serves.

(c) Each washbasin, shower, and bathtub must have hot and cold running water.

(d) Adjacent toilets must be separated by a partition that is open at the top and bottom.

(e) Each washing space and toilet space must be constructed and arranged so that it can be kept in a clean and sanitary condition and the plumbing and mechanical appliances kept in good working order.

§ 32.40–40 Messrooms—T/ALL.

Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40–45 Hospital space—T/ALL.

(a) Except as specifically modified by paragraph (h) of this section, each tankship, which in the ordinary course of its trade makes voyages of more than three days duration between ports, other than on a coastal voyage, and which carries a crew of twelve persons or more, must have a hospital space.

(b) The hospital must be used only for the care of the sick.

(c) Each hospital space must have a toilet, washbasin, and bathtub or shower accessible from the hospital space.

(d) Each hospital space must have a clothes locker, a table, and seats.

(e) On tankships in which the entire crew is berthed in single occupancy rooms, a hospital space is not required if one room is designated and fitted for use as a treatment and isolation room, and meets the following standards:

(1) The room must be available for immediate medical use;

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 32.40–50 Miscellaneous accommodation spaces—T/ALL.

(a) Each tankship must have enough facilities for the crew to wash and dry their own clothes, including at least one tub or sink that has hot and cold running water.

(b) Each tankship must have an accommodation space that can be used for recreation.

§ 32.40–55 Heating requirements—T/ALL.

(a) Radiators and other heating apparatus must be constructed, located or shielded so as to avoid risk of fire or danger and discomfort to the occupants of each accommodation space.

(b) Each exposed pipe in an accommodation space leading to a radiator or other heating apparatus must be insulated.

§ 32.40–60 Insect screens—T/ALL.

Accommodation spaces must be protected against the admission of insects.

§ 32.40–65 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in a manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accommodations must be consistent with the principles underlying the requirements for crew accommodations of tankships of 100 gross tons or more.

§ 32.40–70 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

All tankships of 100 gross tons and over constructed before June 15, 1987 may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 32.95—[Removed]

10. Subpart 32.95 is removed.

PART 34—FIREFIGHTING EQUIPMENT

The authority citation for Part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

12. In § 34.05–5, paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) are revised to read as follows:

§ 34.05–5 Fire-extinguishing systems—T/ALL.

(a) * * *

(1) *Dry cargo compartments.* A carbon dioxide or water spray system shall be installed for the protection of all dry cargo compartments. Where such

compartments are readily accessible by means of doors such spaces need be protected only by the fire main system.

(2) *Cargo tanks.* A deck foam system shall be installed for the protection of all cargo tank spaces. Where a deck foam system is installed, an approved inert gas, steam or other system may also be installed for the purposes of fire prevention or inerting of cargo tanks. For vessels under 100 feet in length, the semiportable equipment required by footnote 1 of Table 34.05–5(a) will be considered as meeting the requirements of this subparagraph.

(3) *Lamp and paint lockers and similar spaces.* A carbon dioxide or water spray system shall be installed in all lamp and paint lockers, oil rooms, and similar spaces.

(4) *Pumprooms.* A carbon dioxide, inert gas, foam or water spray system shall be installed for the protection of all pumprooms.

* * * * *

§ 34.05–15 [Removed]

13. Section 34.05–15 is removed.

14. In § 34.10–10, paragraphs (e), (e–1) and (n) are removed, paragraphs (f) through (m) are redesignated as paragraphs (g) through (n), respectively, and new paragraphs (e), (f) and (o) are added to read as follows:

§ 34.10–10 Fire station hydrants, hose and nozzles—T/ALL.

* * * * *

(e) Each fire station hydrant must have at least one length of fire hose. Each fire hose on the hydrant must have a combination solid stream and water spray fire hose nozzle that meets the requirements in Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. A suitable hose rack or other device shall be provided. Hose racks on weather decks shall be located so as to afford protection from heavy seas. The hose shall be stored in the open or so as to be readily visible.

TABLE 34.10–10(E).—HYDRANTS WITH COAST GUARD APPROVED LOW-VELOCITY WATER SPRAY APPLICATORS

Location	No. of hydrants with approved applicators	Approved applicator length (meters (feet))
Living spaces.	1	1.2(4)

TABLE 34.10–10(E).—HYDRANTS WITH COAST GUARD APPROVED LOW-VELOCITY WATER SPRAY APPLICATORS—Continued

Location	No. of hydrants with approved applicators	Approved applicator length (meters (feet))
Weather deck.	4	3(10) or 3.7(12)
Machinery space.	2	1.2(4)

(f) Each combination nozzle previously approved under Subpart 162.027 of this chapter in the locations listed in Table 34.10–10(E) must have a low-velocity water spray applicator also previously approved under Subpart 162.027 of this chapter that is of the length listed in that table.

* * * * *

(o) Each low-velocity water spray applicator under paragraph (f) of this section must have fixed brackets, hooks, or other means for stowing next to the hydrant.

15. In § 34.10–90, paragraphs (a)(12) and (a)(13) are removed, paragraph (a)(14) is redesignated as (a)(12) and paragraphs (a)(10), (a)(11) and (b)(2) are revised to read as follows:

§ 34.10–90 Installations contracted for prior to May 26, 1965—T/ALL.

(a) * * *

(10) Each fire station hydrant on a tankship of 500 gross tons or more must have at least one length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of Subpart 162.027. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(11) On each tankship of 1000 gross tons or more, the nozzle required by paragraph (a)(10) on each of the following hydrants must have a low velocity applicator that was previously approved under Subpart 162.027 and that connects to that nozzle when the nozzle itself was previously approved under Subpart 162.027;

(i) At least two hydrants in the machinery and boiler spaces.

(ii) At least 25 percent of other hydrants.

* * * * *

(b) * * *

(2) Each fire station hydrant must have at least one length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray nozzle that meets the requirements of Subpart 162.027. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the fire hose nozzles were previously approved under Subpart 162.027, each of the number of hydrants in the locations listed in Table 34.10–10(E) must have a low velocity water spray applicator that:

(i) Was previously approved under Subpart 162.027 of this chapter:

(ii) Is the length listed in Table 34.10–(E); and

(iii) Meets § 34.10–10(o).

16. Subpart 34.13 is revised to read as follows:

Subpart 34.13—Steam Smothering Systems

§ 34.13–1 Application—T/ALL.

Steam smothering fire extinguishing systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 34.55—[Removed]

17. Subpart 34.55 is removed.

PART 35—OPERATIONS

18. The authority citation for Part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–5 [Amended]

19. In § 35.01–5, paragraphs (b) and (c) are removed and the paragraph designation ''(a)'' is removed from paragraph (a).

20. Section 35.07–5 is revised to read as follows:

§ 35.07–5 Logbooks and records—TB/ALL.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired

for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 35.07–15 [Removed]

21. Section 35.07–15 is removed.

§ 35.10–5 [Amended]

22. In § 35.10–5, paragraph (g) is removed and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

23. Subpart 35.12 is revised to read as follows:

Subpart 35.12—Placard of Lifesaving Signals

Sec.
35.12–1 Application—T/OCLB.
35.12–5 Availability—T/OCLB.

§ 35.12–1 Application—T/OCLB.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 35.12–5 Availability—T/OCLB.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

§ 35.20–15 [Removed]

24. Section 35.20–15 is removed.

§ 35.20–25 [Removed]

25. Section 35.20–25 is removed.

26. Section 35.20–30 is revised to read as follows:

§ 35.20–30 Flashing the rays of a searchlight or other blinding light—T/ALL.

No person shall flash or cause to be flashed the rays of a search light or other blinding light onto the bridge or into the pilothouse of any vessel under way.

27. Section 35.20–35 is revised to read as follows:

§ 35.20–35 Whistling—All.

The unnecessary sounding of a vessel's whistle is prohibited within any harbor limits of the United States.

28. Section 35.20–40 is revised to read as follows:

§ 35.20–40 Maneuvering characteristics—T/OC.

(a) Each ocean and coastwide tankship of 1,600 gross tons or over must have the maneuvering information listed in 33 CFR 164.35(g)(1) through (g)(7) prominently displayed in the pilot house on a fact sheet.

(b) The information on the fact sheet must be:

(1) Verified by the owner or operator six months after the vessel is placed in service; or

(2) Modified six months after the vessel is placed into service and verified within three months thereafter.

(c) The information that appears on the fact sheet may be obtained from:

(1) Trial trip observations;

(2) Model tests;

(3) Analytical calculations;

(4) Simulations;

(5) Information established from another vessel of similar hull form, power, rudder and propeller; or

(6) Any combination of the above. The accuracy of the information in the fact sheet required is that attainable by ordinary shipboard navigation equipment.

(d) The requirement for information for fact sheets for vessels of unusual design will be specified on a case by case basis.

29. Section 35.25–1 is revised to read as follows:

§ 35.25–1. Examination of boilers and machinery by engineer—T/ALL.

It shall be the duty of an engineer when he assumes charge of the boilers to examine the same forthwith and thoroughly. If he finds any part thereof in bad condition, he shall immediately report the facts to the master, owner, or agent, and to the nearest Officer in Charge, Marine Inspection.

§ 35.30–45 [Removed]

30. Section 35.30–45 is removed.

§ 35.40–40 [Amended]

31. In § 35.40–40, paragraph (a) is amended by removing the words ''fire hoses, fire axes,''.

Subpart 35.70—[Removed]

32. Subpart 35.70 is removed.

PART 38—LIQUEFIED FLAMMABLE GASES

33. The authority citation for Part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. In § 38.25–10, paragraph (b) is revised to read as follows:

§ 38.25–10 Safety relief valves—TB/ALL.

* * * * *

(b) The safety relief valve discs shall be lifted from their seats in the presence of a marine inspector by either liquid, gas, or vapor pressure at least once every 5 years to determine the accuracy of adjustment and, if necessary, shall be reset.

PART 54—PRESSURE VESSELS

35. The authority citation for Part 54 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

36. In § 54.01–1, paragraph (b) is amended by removing the incorporation by reference entry for the Tubular Exchanger Manufacturers Association.

§ 54.01–3 [Removed]

37. Section 54.01–3 is removed.

§ 54.01–5 [Amended]

38. In § 54.01–5, paragraph (d)(5) is amended by adding the word ''and'' after the semicolon, paragraph (d)(6) is removed, paragraph (d)(7) is redesignated as paragraph (d)(6) and footnote 8 is removed from Table 54.01–5(b).

PART 56—PIPING SYSTEMS AND APPURTENANCES

39. The authority citation for Part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

40. In § 56.01–2, paragraph (b) is amended by adding in numerical order of the standards incorporated by reference from the American Society for Testing and Materials (ASTM) the following additional standards:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

ASTM F 1387–93 Standard—56.30–40
Specification for Performance of Mechanically Attached Fittings

ASTM F 1476–93 Standard—56.30–35
Specification for Performance of Casketed Mechanical Couplings for Use in Piping Applications

* * * * *

41. Section 56.30–35 is revised to read as follows:

§ 56.30–35 Sleeve coupled and other proprietary joints.

Coupling type, mechanical gland type and other proprietary joints may be used in certain locations (see § 56.30–40(d) for limitations) where experience or tests have demonstrated that the joint is safe for the operating conditions, and where adequate provision is made to prevent separation of the joint. Fittings of this type shall be designed, constructed, tested and marked in accordance with ASTM F 1476–93.

42. In § 56.30–40, paragraphs (b), (c), (e), and (h) are removed, paragraph (d) is redesignated as paragraph (c), paragraphs (f) and (g) are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (b) is added to read as follows:

§ 56.30–40 Flexible pipe couplings of the compression or slip-on type.

* * * * *

(b) Couplings shall be designed, constructed, tested and marked in accordance with ASTM F 1387–93.

* * * * *

§ 56.50–100 [Removed]

43. Section 56.50–100 is removed.

PART 61—PERIODIC TESTS AND INSPECTIONS

44. The authority citation for Part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Subpart 61.03 is added to read as follows:

Subpart 61.03—Incorporation of Standards

§ 61.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103

ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, 1992—61.20–17

§ 61.05–5 [Amended]

46. In § 61.05–5, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

47. Section 61.20–17 is revised to read as follows:

§ 61.20–17 Examination intervals.

(a) A lubricant that demonstrates the corrosion inhibiting properties of oil when tested in accordance with ASTM D 665–92 is considered to be equivalent to oil for the purposes of the tailshaft examination interval.

(b) Except as provided in paragraphs (c) through (f) of this section, each tailshaft on a vessel must be examined twice within any five year period. No more than three years may elapse between any two tailshaft examinations.

(c) Tailshafts on vessels fitted with multiple shafts must be examined once every five years.

(d) Tailshafts with inaccessible portions fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every five years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentrations or are fitted with a flanged propeller. Accessible portions of tailshafts must be examined visually during each drydock examination.

(e) Tailshafts with oil lubricated bearings, including bearings lubricated with a substance considered to be equivalent to oil under the provisions of paragraph (a), need not be drawn for examination—

(1) If tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) If the inboard seal assemblies are examined whenever the vessel undergoes a drydock examination or underwater survey;

(3) If an analysis of the tailshaft bearing lubricant is performed semiannually in accordance with the lubrication system manufacturer's recommendations to determine bearing material content or the presence of other contaminants; and

(4) If—

(i) For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed five years; or

(ii) For tailshafts with a propeller fitted to the shaft by means of a coupling flange, the propeller coupling bolts and flange radius are nondestructively tested whenever they are removed or made accessible in connection with overhaul or repairs.

(f) Tailshafts on mobile offshore drilling units are not subject to examination intervals under paragraphs (b) through (d) of this section if they are—

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G–MCO).

§ 61.30–5 [Amended]

48. In § 61.30–5, paragraph (a) is removed and the paragraph designation ''(b)'' is removed from paragraph (b).

PART 72—CONSTRUCTION AND ARRANGEMENT

49. The authority citation for Part 72 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.05–60 [Removed]

50. Section 72.05–60 is removed.

51. Subpart 72.20 is revised to read as follows:

Subpart 72.20—Accommodations for Officers and Crew

Sec.
72.20–1 Application.
72.20–5 Intent.
72.20–10 Location of crew spaces.
72.20–15 Construction.
72.20–20 Sleeping accommodations.
72.20–25 Washrooms and toilet rooms.
72.20–30 Messrooms.
72.20–35 Hospital space.
72.20–40 Other spaces.
72.20–45 Lighting.
72.20–50 Heating.
72.20–55 Insect screens.
72.20–90 Vessels contracted for prior to November 19, 1952.

§ 72.20–1 Application.

The provisions of this subchapter, except § 72.20–90, apply to all vessels contracted for after November 18, 1952. Vessels contracted for before November 19, 1952 shall meet the requirements of § 72.20–90.

§ 72.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels shall be securely

constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and where practicable, shall be insulated from undue noise, heat and odors.

§ 72.20–10 Location of crew spaces.

(a) Crew quarters shall not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 m (28 ft). For the purposes of this paragraph, the length shall be as defined in § 43.15–1 of Subchapter E (Load Lines) of this chapter. No section of the deck of the crew spaces shall be below the deepest load line, except that in special cases, the Commandant may approve such an arrangement.

(b) There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 72.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and effluvia.

§ 72.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there is at least 2.78 m^2 (30 ft^3) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear head room shall be not less than 190 cm (75 in). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berth shall be composed of materials not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker shall be provided for each person accommodated in a room.

§ 72.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing. Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 72.20–30 Messrooms.

Messrooms shall be located as near to the galley as is practicable except where the messroom is equipped with a steam table. The messroom shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 72.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(d) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(a) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

(c) A space or spaces of adequate size shall be available on an open deck to which the crew has access when off duty.

§ 72.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 72.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 72.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 72.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction provided that in no case will a greater departure from the standards of §§ 72.20–5 through 72.20–55 be permitted than presently exists.

(b) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Where reasonable and practicable, a minimum of 1 toilet, shower, and washbasin shall be provided for each 10 members of the crew or fraction thereof.

(3) Crew spaces shall have a volume of at least 3.4 m^3 (120 ft^2) and a deck

area of at least 1.5 m^2 (16 ft^3) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable shall be insulated from undue noise and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) There shall be a minimum of one toilet, shower, and washbasin for each eight members of the crew or fraction thereof who are not accommodated in rooms having attached private or semi-private facilities. Washbasins, showers, and bathtubs if substituted for showers, shall be equipped with proper plumbing, including hot and cold running water.

(3) Crew spaces shall have a volume of at least 3.4 m^3 (120 ft^2) and a deck area of at least 1.5 m^2 (16 ft^3) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable shall be insulated from undue noise and odors.

PART 76—FIRE PROTECTION EQUIPMENT

52. The authority citation for Part 76 continues to read as follows:

Authority: 46 U.S.C. 3306, E.O. 12243, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 76.05–20 is revised to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems shall be installed, as required by Table 76.05–1(a) on all self-propelled vessels and on all barges with sleeping accommodations for more than six persons.

§ 76.05–30 [Removed]

54. Section 76.05–30 is removed.

55. In § 76.10–10, paragraphs (j–1) and (j–2) are removed, paragraph (k) and (l) is redesignated as paragraphs (m) and (n), paragraph (j) is revised and new paragraphs (k) and (l) are added to read as follows:

§ 76.10–10 Fire hydrants and hose.

* * * * *

(j) Each fire hose on each hydrant must have a combination solid stream and water spray fire hose nozzle that meets the requirements in Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(k) Fire hose nozzles previously approved under Subpart 162.027 of this chapter in the following locations must have low-velocity water spray applicators also previously approved under Subpart 162.027 of this chapter.

(1) In accommodation and service areas, two fire hoses.

(2) In each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more, each fire hose. The length of each applicator must be not more than 1.8 m (6 feet).

(1) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (k) of this section.

* * * * *

56. In § 76.10–90, paragraph (a)(7) is removed and paragraph (a)(6) is revised to read as follows:

§ 76.10–90 Installations contracted for prior to May 26, 1965.

(a) * * *

(6) Firehose nozzles and low velocity spray applicators must meet the requirements of §§ 76.10–10(j), 76.10–10(k) and 76.10–10(l).

57. Subpart 76.13 is revised to read as follows:

Subpart 76.13—System Smothering Systems

§ 76.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

58. The authority citation for Part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

59. Section 77.27–1 is revised to read as follows:

§ 77.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service, and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic deep-sea sounding apparatus.

PART 78—OPERATIONS

60. The authority citation for Part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 78.03—[Removed]

61. Subpart 78.03 is removed.

Subpart 78.20—[Removed]

62. Subpart 78.20 is removed.

63. In § 78.21–1, paragraphs (a), (b), (c) and (d) are removed, paragraphs, (e) and (f) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added to read as follows:

§ 78.21–1 Data required.

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

(1) Verified six months after the vessel is placed into service; or

(2) Modified six months after the vessel is placed into service and verified within three months thereafter.

* * * * *

Subpart 78.25—[Removed]

64. Subpart 78.25 is removed.

65. Subpart 78.35 is revised to read as follows:

Subpart 78.35—Communication between deckhouses

§ 78.35–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

66. Section 78.37–3 is revised to read as follows:

§ 78.37–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 78.47–67 [Removed]

67. Section 78.47–67 is removed.

68. Subpart 78.53 is revised to read as follows:

Subpart 78.53—Placard of Lifesaving Signals

Sec.
78.53–1 Application.
78.53–5 Availability.

§ 78.53–1 Application.

The provisions of this subpart shall to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 78.53–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

69. Section 78.57–1 is revised to read as follows:

§ 78.57–1 All personnel must comply.

All licensed masters, officers, and certificated seamen on United States vessels shall comply strictly with routing instructions issued by competent naval authority.

Subpart 78.75—[Removed]

70. Subpart 78.75 is removed.

Subpart 78.80—[Removed]

71. Subpart 78.80 is removed.

Subpart 78.85—[Removed]

72. Subpart 78.85 is removed.

PART 92—CONSTRUCTION AND ARRANGEMENT

73. The authority citation for Part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 92.01–13 [Removed]

74. Section 92.01–13 is removed.

75. Subpart 92.20 is revised to read as follows:

Subpart 92.20—Accommodations for Officers and Crew

Sec.
92.20–1 Application.
92.20–5 Intent.
92.20–10 Location of crew spaces.
92.20–15 Construction.
92.20–20 Sleeping accommodations.
92.20–25 Washrooms and toilet rooms.
92.20–30 Messrooms.
92.30–35 Hospital space.
92.20–40 Other spaces.
92.20–45 Lighting.
92.20–50 Heating.
92.20–55 Insect screens.
92.20–90 Vessels contracted for prior to November 19, 1952.

§ 92.20–1 Application.

(a) The provisions of this subpart, with the exception of § 92.20.90, shall apply to all vessels of 100 gross tons and over contracted for on or after November 19, 1952. Vessels of 100 gross tons and over contracted for prior to November 19, 1952 shall meet the requirements of § 92.20–90.

(b) Vessels of less than 100 gross tons shall meet the applicable requirements of this subpart insofar as is reasonable and practicable.

§ 92.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

§ 92.20–10 Location of crew spaces.

(a) Crew spaces shall be located, where practicable, so that the maximum amount of fresh air and light are obtainable.

(b) Crew quarters shall not be located farther forward in a vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load waterline. However, for vessels in other than ocean services, this distance need not exceed 8.5 m (28 ft). For the purpose of this paragraph, the length shall be as defined in § 42.13–15 of Subchapter E (Load Lines) of this chapter.

There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, cargo, or machinery spaces.

(d) There shall be no access, vents, or sounding tubes from fuel or cargo oil tanks opening into crew spaces, except that sounding tubes and access openings may be located in corridors.

§ 92.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

§ 92.20–20 Sleeping accommodations.

(a) Each department head and watchstanding officer shall have a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there is at least 2.78 m^2 (30 ft^3) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear headroom shall be not less than 190 cm (75 in). In measuring sleeping quarters allocated to crews of vessels, any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berths shall be composed of a material not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker provided for each person accommodated in a room.

§ 92.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semiprivate facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing.

(d) At least one washbasin shall be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) When more than one toilet is located in a space, each toilet shall be separated by partitions.

§ 92.20–30 Messrooms.

Messrooms shall be located as near to the galley as practicable. The messrooms shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 92.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(e) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms a hospital space will not be required, provided, that one room shall be designated and fitted for use as a treatment and isolation room. Such room shall meet the following standards:

(1) The room must be available for immediate medical use; and,

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 92.20–40 Other spaces.

(a) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

§ 92.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 92.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 92.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 92.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of less than 100 gross tons, contracted for prior to November 19, 1952 shall meet the general intent of § 92.20–5 and in addition shall meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(b) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction: Provided, That in no case will a greater departure from the standards of 92.20–5 through 92.20–55 be permitted than presently exists.

(c) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(2) Each vessel, which in the ordinary course of its trade makes a voyage of more than three days duration between ports and which carries a crew of 12 or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured.

(3) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable, shall be insulated from undue noise and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1,

1941, but prior to November 19, 1952, shall meet the requirements of this paragraph.

Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(2) Washbasins, showers, and bath tubs if substituted for showers, shall be equipped with proper plumbing including hot and cold running water.

(3) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(4) Each vessel, which in the ordinary course of its trade makes a voyage of more than three days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of one berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed six.

(5) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located and arranged, and where practicable, shall be insulated from undue noise and odors.

PART 95—FIRE PROTECTION EQUIPMENT

76. The authority citation for Part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

77. In § 95.05–10, paragraph (g) is removed and paragraphs (b) and (c) are revised to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

* * * * *

(b) A fixed carbon dioxide or other approved system shall be installed in all cargo compartments and tanks for combustible cargo, except that vessels engaged exclusively in the carriage of coal or grain in bulk need not be fitted with such system. For cargo compartments and tanks fitted with a fixed carbon dioxide or other approved system a deck foam system is not required. In lieu of the carbon dioxide system or other approved system, the following systems may be used or required in special cases:

(1) A fixed foam system may be used in cargo tanks.

(2) In cases where a cargo is normally accessible and is considered to be a part of the working or living quarters, a water sprinkling system may be required, and the details of such system will be subject to special approval.

(3) Spaces ''specially suitable for vehicles'' shall be fitted with an approved carbon dioxide system. Alternately, the Commandant may permit the installation of an approved water sprinkler system or other suitable system.

(c) On vessels other than motorboats, a fixed carbon dioxide or other approved system shall be installed in all lamp and paint lockers, oil rooms, and similar spaces.

* * * * *

§ 95.05–20 [Removed]

78. Section 95.05–20 is removed.

79. In § 95.10–10, paragraphs (i), (i–1), (i–2) and (1) are removed, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, and new paragraphs (i), (j), (k), (n), (n)(1), (n)(2) an (n)(3) are added to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * * * *

(i) Except as allowed in this paragraph, each fire hose on each hydrant must have a combination solid stream and water spray fire hose nozzle approved under Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) In each propulsion machinery space containing an oil fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1,000 gross tons or more, each fire hose having a combination nozzle previously approved under Subpart 162.027 of this chapter must have a low-velocity water spray applicator that is also previously approved under Subpart 162.027 of this chapter. The length of the applicator must be less than 1.8 m (6 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

(n) Fire hose and couplings shall be as follows:

(1) Couplings shall be of brass, bronze, or other equivalent metal. National Standard fire hose coupling threads shall be used for the 38 mm (1½ inch) and 64 mm (2½ inch) sizes.

(2) Where 19 mm (¾ inch) hose is permitted by Table 95.10–5(a), the hose and couplings shall be of good commercial grade.

(3) Each section of fire hose must be lined commercial fire hose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification—H–451E. Hose that bears the label of Underwriters' Laboratories, Inc. as lined fire hose is accepted as conforming to this requirement.

* * * * *

80. In § 95.10–90, paragraph (a)(6) is removed and paragraph (a)(5) is revised to read as follows:

§ 95.10–90 Installations contracted for prior to May 26, 1965.

(a) * * *

(5) Firehose nozzles and low velocity spray applicators must meet the requirements of 95.10–10(i), 95.10–10(j) and 95.10–10(k).

81. Subpart 95.13 is revised to read as follows:

Subpart 95.13—Steam Smothering Systems

§ 95.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

82. The authority citation for Part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

83. Section 96.27–1 is revised to read as follows:

§ 96.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic sounding apparatus.

PART 97—OPERATIONS

84. The authority citation for Part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 97.03—[Removed]

85. Subpart 97.03 is removed.

Subpart 97.17—[Removed]

86. Subpart 97.17 is removed.

87. In § 97.19–1, paragraphs (a), (b) and (c) are removed, paragraphs (d), (e) and (f) are redesignated as paragraphs (a), (b) and (c), respectively, and the new paragraph (a) is revised to read as follows:

§ 97.19–1 Data required.

* * * * *

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

* * * * *

Subpart 97.23—[Removed]

88. Subpart 97.23 is removed.

89. Subpart 97.33 is revised to read as follows:

Subpart 97.33—Communication Between Deckhouses

§ 97.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

90. Section 97.35–3 is revised to read as follows:

§ 97.35–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When a voyage is completed, or after a specified period of time, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 97.35–10 [Removed]

91. Section 97.35–10 is removed.

§ 97.37–45 [Removed]

92. Section 97.37–45 is removed.

93. Subpart 97.43 is revised to read as follows:

Subpart 97.43—Placard of Lifesaving Signals

Sec.
97.43–1 Application.
97.43–5 Availability.

§ 97.43–1 Application.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 97.43–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

94. Section 97.47–1 is revised to read as follows:

§ 97.47–1 All persons must comply.

All licensed masters, officers, and certificated seamen on United States vessels must comply strictly with routing instructions issued by competent naval authority.

Subpart 97.60—[Removed]

95. Subpart 97.60 is removed.

Subpart 97.70—[Removed]

96. Subpart 97.70 is removed.

Subpart 97.75—[Removed]

97. Subpart 97.75 is removed.

PART 108—DESIGN AND EQUIPMENT

98. The authority citation for Part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

§ 108.403 [Amended]

99. In § 108.403, the words '', water spray,'' are removed from paragraph (b).

100. In § 108.425, paragraph (c) and the introductory text of paragraph (d) are revised to read as follows:

§ 108.425 Fire hoses and associated equipment.

* * * * *

(c) Each nozzle for a fire hose in a fire main system must be a combination solid stream and water spray fire hose nozzle that is approved under Subpart 162.027. Combination solid stream and water spray nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(d) A combination solid stream and water spray fire hose nozzle previously approved under Subpart 162.027 of this chapter installed in the following locations must have a low-velocity spray applicator also previously approved under Subpart 162.027 of this chapter——

* * * * *

§ 108.613 [Removed]

101. Section 108.613 is removed.

PART 109—OPERATIONS

102. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

§ 109.583 [Removed]

103. Section 109.583 is removed.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

104. The authority citation for Part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

105. In § 153.9, paragraph (a) introductory text is revised to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) Application for a vessel whose flag administration is signatory to MARPOL 73/78 and issues IMO Certificates. A person who desires a Certificate of Compliance endorsed to carry a cargo in Table 1 of this part, as described in 153.900, must request the endorsement from the cognizant Officer in Charge, Marine Inspection and have aboard the vessel copies of IMO Certificates issued by the vessel's administration and the following:

* * * * *

§ 153.16 [Amended]

106. In § 153.16, the introductory text is amended by replacing ''Certificate of Compliance endorsed with the name of a cargo,'' with ''Certificate of Compliance endorsed to carry a cargo.''

§ 153.808 [Amended]

107. Section 153.808 is amended by replacing ''Certificate of Compliance endorsed with the name of a cargo,'' with ''Certificate of Compliance endorsed to carry a cargo''.

108. Section 153.809 is revised to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

The owner of a foreign flag vessel wishing to have the Coast Guard conduct a Certificate of Compliance examination, as required by § 153.808, must proceed as follows:

(a) Notify the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least seven days before the vessel arrives and arrange the exact time and other details of the examination. This notification is in addition to any other pre-arrival notice to the Coast Guard required by other regulations, but may be concurrent with the endorsement application in 153.9, and must include:

(1) The name of the vessel's first U.S. port of call;

(2) The date the vessel is scheduled to arrive;

(3) The name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in Table 1 of this part that are on board the vessel.

(b) Make certain that the following plans are on board the vessel and available to the Marine Inspector before the examination required by 153.808 is begun:

(1) A general arrangement (including the location of fire fighting, safety and lifesaving gear);

(2) A capacity plan;

(3) A schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(4) A schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

109. In § 153.902, paragraph (b) and (c) are revised to read as follows:

§ 153.902 Expiration and invalidation of the Certificate of Compliance.

* * * * *

(b) The endorsement of a Certificate of Compliance under this part is invalid if the ship does not have a valid IMO Certificate of Fitness.

(c) The endorsement on a Certificate of Compliance invalidated under paragraph (b) of this section, becomes valid once again when the ship has the IMO Certificate of Fitness revalidated or reissued.

PART 160—LIFESAVING EQUIPMENT

110. The authority citation for Part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.018—[Removed]

111. Subpart 160.018 is removed.

Subpart 160.034—[Removed]

112. Subpart 160.034 is removed.

PART 162—ENGINEERING EQUIPMENT

113. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

114. Subpart 162.027 is revised to read as follows:

Subpart 162.027—Combination Solid Stream and Water Spray Fire Hose nozzle

Sec.
162.027–1 Incorporation by reference.
162.027–2 Design, construction, testing and marking requirements.
167.027–3 Approval procedures.

§ 162.027–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103

ASTM F 1546–94, Standard Specification for Fire Hose nozzles, 1994—162.027–2, 162.027–3

§ 162.027–2 Design, construction, testing and marking requirements.

Each combination solid stream and water spray nozzle shall meet the requirements of ASTM F 1546–94.

§ 162.027–3 Approval procedures.

(a) All inspections and tests required by ASTM F 1546–94 shall be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (G–MMS).

(b) Upon completion of the testing required by ASTM F 1546–94, the independent laboratory shall prepare a report on the results of the testing and shall furnish the manufacturer with a copy of the test report.

PART 164—MATERIALS

115. The authority citation for part 164 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 164.016—[Removed]

116. Subpart 164.016 is removed.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

117. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 167.40–20 [Amended]

118. In § 167.40–20, the words ''in addition to the ordinary deep-sea hand lead'' are removed.

§ 167.40–35 [Removed]

119. Section 167.40–35 is removed.

120. In § 167.45–40, paragraphs (c–1) and (c–2) are removed and paragraphs (a), (b) and (c) are revised to read as follows:

§ 167.45–40 Fire fighting equipment on nautical schoolships using oil as fuel.

* * * * *

(a) In each boiler room and in each of the machinery spaces of a nautical school ship propelled by steam, in which a part of the fuel-oil installation is situated, two or more approved fire extinguishers of the foam type of not less than 9.5 L (2½ gallons) each or two or more approved fire extinguishers of the carbon dioxide type of not less than 33 kg (15 pounds) each shall be placed where accessible and ready for

immediate use: *Provided*, That on a nautical school ship of 1,000 gross tons and under only one of the fire extinguishers may be required.

(b) In boiler and machinery spaces, at least two fire hydrants must have a fire hose of a length that allows each part of the boiler and machinery spaces to be reached by the combination nozzle.

(c) Each fire hose under paragraph (b) of this section must have a combination solid stream and water spray nozzle that meets subpart 162.027 of this chapter. A combination nozzle and a low-velocity spray applicator previously approved under subpart 162.027 of this chapter may remain so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

§ 167.45–55 [Removed]

121. Section 167.45–55 is removed.

Subpart 167.50—[Removed]

122. Subpart 167.50 is removed.

123. In § 167.55–5, paragraph (i) is removed, paragraph (j) is redesignated as paragraph (i) and the new paragraph (i)(1) is revised to read as follows:

§ 167.55–5 Marking of fire and emergency equipment, etc.

* * * * *

(i) * * *

(1) All lifeboats, rigid type oars and paddles, life preservers, EPIRB and life buoys shall be painted or branded with the name of the nautical school ship.

* * * * *

§ 167.65–3 [Removed]

124. Section 167.65–3 is removed.

§ 167.65–10 [Removed]

125. Section 167.65–10 is removed.

126. Section 167.65–15 is revised to read as follows:

§ 167.65–15 Routing instructions; strict compliance with.

All licensed masters, officers, and certificated seamen on nautical school ships must comply strictly with routing instructions issued by competent naval authority.

§ 167.65–30 [Removed]

137. Section 167.65–30 is removed.

§ 167.65–45 [Amended]

128. In § 167.65–45, paragraphs (a), (b), and (c) are removed and the paragraph designation ''(d)'' is removed from paragraph (d).

129. Section 167.65–50 is revised to read as follows:

§ 167.65–50 Posting placards of lifesaving signals.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch placard containing instructions for the use of the lifesaving signals set for in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

130. The authority citation for Part 168 is revised to read as follows:

Authority: 46 U.S.C. 3305, 3306; 48 CFR 1.46.

131. Subpart 168.15 is revised to read as follows:

Subpart 168.15—Accommodations

Sec.
168.15–1 Intent.
168.15–5 Locations.
168.15–10 Construction.
168.15–15 Size.
168.15–20 Equipment.
168.15–25 Washrooms.
168.15–30 Toilet rooms.
168.15–35 Hospital space.
168.15–40 Lighting.
168.15–45 Heating.
168.15–50 Ventilation.
168.15–55 Screening.
168.15–60 Inspection.

§ 168.15–1 Intent.

It is the intent of this subpart to provide minimum standards for the size, ventilation, plumbing, and sanitation of quarters assigned to the members of the crew, passengers, cadets, students, instructors, or any other persons at any time quartered on board any such vessel.

§ 168.15–5 Location.

(a) Quarters shall be located so that sufficient fresh air and light are obtainable compatible with accepted practice or good arrangement and construction.

(b) Quarters shall not be located forward of the collision bulkhead, nor shall such section or sections of any deck occupied by quarters be below the deepest load line except in special case.

§ 168.15–10 Construction.

(a) The accommodations provided must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat and odors.

(b) All accommodations shall be constructed and arranged so that they can be kept in a clean, workable, and sanitary condition.

§ 168.15–15 Size.

(a) Sleeping accommodations shall be divided into rooms, no one of which shall berth more than 6 persons. The purpose for which each space is to be used and the number of persons it may accommodate, shall be marked.

(b) Each room shall be of such size that there is at least 1.8 m^2 (20 ft^3) of deck area and a volume of at least 4.2 m^3 (150 ft^2) for each person accommodated. In measuring sleeping quarters, any furnishings contained therein are not to be deducted from the total volume or from the deck area.

§ 168.15–20 Equipment.

(a) Each person shall have a separate berth and not more than 1 berth shall be placed above another. The berths shall be of metal framework. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck, and the bottom of the upper must not be less than 76 cm (30 in) both from the bottom of the lower and from the deck overhead. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(b) A metal locker shall be provided for each person accommodated in a room.

§ 168.15–25 Washrooms.

(a) There shall be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each 6 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) All wash basins and showers shall be equipped with proper plumbing including hot and cold running fresh water.

§ 168.15–30 Toilet rooms.

(a) There shall be provided 1 toilet for each 10 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) The toilet rooms shall be located convenient to the sleeping quarters of the persons to which they are allotted but shall not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 168.15–35 Hospital space.

(a) Each vessel shall be provided with a hospital space. This space shall be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of 1 berth to every twelve persons, but the number of berths need not exceed 6.

(d) The hospital shall have a toilet, wash basin, and bath tub or shower conveniently located. Other necessary suitable equipment of a sanitary type such as clothes locker, table, seat, etc., shall be provided.

§ 168.15–40 Lighting.

All quarters, to include washrooms, toilet rooms, and hospital spaces, shall be adequately lighted.

§ 168.15–45 Heating.

All quarters shall be adequately heated in a manner suitable to the purpose of the space.

§ 168.15–50 Ventilation.

(a) All quarters shall be adequately ventilated in a manner suitable to the purpose of the space and route of the vessel.

(b) When mechanical ventilation is provided for sleeping rooms, washrooms, toilet rooms, hospital spaces and messrooms, these spaces shall be supplied with fresh air equal to at least 10 times the volume of the room each hour.

§ 168.15–55 Screening.

Provision shall be made to protect the quarters against the admission of insects.

§ 168.15–60 Inspection.

The Officer in Charge, Marine Inspection, shall inspect the quarters of every such vessel at least once in each month or at such time as the vessel shall enter an American port and shall satisfy himself that such vessel is in compliance with the regulations in this part.

PART 169—SAILING SCHOOL VESSELS

132. The authority citation for Part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.321 [Removed]

133. Section 169.321 is removed.

§ 169.569 [Removed]

134. Section 169.569 is removed.

§ 169.742 [Removed]

135. Section 169.742 is removed.

PART 189—INSPECTION AND CERTIFICATION

PART 190—CONSTRUCTION AND ARRANGEMENT

136–138. The authority citation for Part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–13 [Removed]

139. Section 190.01–13 is removed.

140. Subpart 190.20 is revised to read as follows:

Subpart 190.20—Accommodations for Officers, Crew, and Scientific Personnel

Sec.

190.20–1 Application.
190.20–5 Intent.
190.20–10 Location of crew spaces.
190.20–15 Construction.
190.20–20 Sleeping accommodations.
190.20–25 Washrooms and toilet rooms.
190.20–30 Messrooms.
190.20–35 Hospital space.
190.20–40 Other spaces.
190.20–45 Lighting.
190.20–50 Heating.
190.20–55 Insect screens.
190.20–90 Vessels contracted for prior to March 1, 1968.

§ 190.20–1 Application.

(a) The provisions of this subpart, with the exception of § 190.20–90, shall apply to all vessels contracted for on or after March 1, 1968.

(b) Vessels contracted for prior to March 1, 1968, shall meet the requirements of § 190.20–90.

§ 190.20–5 Intent.

(a) It is the intent of this subpart that the accommodations provided for officers, crew, and scientific personnel on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise and free from odors.

(b) Provided the intent of this subpart is met, consideration may be given by the Officer in Charge, Marine Inspection to relax the requirements relating to the size and separation of accommodations for scientific personnel.

§ 190.20–10 Location of crew spaces.

(a) Crew quarters shall not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designated summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 m (28 ft). For purpose of this paragraph the length shall be as defined in § 43.15–1 of Subchapter E (Load Lines) of this chapter. No section of the deck of the crew spaces shall be below the deepest load line, except that in special cases, the Commandant may approve such an arrangement.

(b) There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 190.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

§ 190.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there are at least 2.78 m^2 (30 ft^3) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear head room shall be not less than 190 cm (75 in). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berth shall be composed of materials not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker shall be provided for each person accommodated in a room.

§ 190.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one

shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing. Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 190.20–30 Messrooms.

Messrooms shall be located as near to the galley as is practicable except where the messroom is equipped with a steam table. The messroom shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 190.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six. Where all single occupancy rooms are provided, the requirement for a separate hospital may be withdrawn: Provided, That one stateroom is fitted with a bunk accessible from both sides.

(e) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms a hospital space will not be required, Provided, That one room shall be designated and fitted for use as a treatment and isolation room. Such room shall meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 190.20–40 Other spaces.

(a) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

§ 190.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 190.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 190.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 190.20–90 Vessels contracted for prior to March 1, 1968.

Existing structures, arrangements, materials, and facilities previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standards as the original construction: Provided, That in no case will a greater departure from the standards of § 190.20–5 through 190.20–55 be permitted than presently exists.

PART 193—FIRE PROTECTION EQUIPMENT

141. The authority citation for Part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 193.05–20 [Removed]

142. Section 193.05–20 is removed.

143. In § 193.10–10, paragraphs (j) and (k) are redesignated paragraphs (l) and (m), respectively, paragraphs (i-1) and (i-2) are removed, paragraphs (d) and (i) are revised and new paragraphs (j) and (k) are added to read as follows:

§ 193.10–10 Fire hydrants and hose.

* * * * *

(d) Fire hydrants shall be of sufficient number and so located that any part of the vessel, other than main machinery spaces, may be reached with at least 2 streams of water from separate outlets, at least one of which shall be from a single length of hose. In main machinery spaces, all portions of such spaces shall be capable of being reached by at least 2 streams of water, each of which shall be from a single length of hose from separate outlets; however, this requirement need not apply to shaft alleys containing no assigned space for the stowage of combustibles. Fire hydrants shall be numbered as required by § 196.37–15 of this subchapter.

* * * * *

(i) Each fire hydrant shall have at least one length of fire hose. Each fire hose must have a combination solid stream and water spray nozzle that is approved under Subpart 162.027 of this subchapter, except 19 mm (¾ inch) hose may have a garden hose nozzle that is bronze or metal with strength and corrosion resistance equivalent to bronze. Combination solid stream and water spray nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) Each of the following must have a low-velocity water spray applicator previously approved under Subpart 162.027 of this chapter when the fire hose nozzle was also previously approved under Subpart 162.027 of this chapter.

(1) At least one length of fire hose on each fire hydrant outside and in the immediate vicinity of each laboratory.

(2) Each fire hose in each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel of 1000 gross tons or more. The length of each applicator must be 1.2 m (4 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

144. Section 193.10–90 is revised to read as follows:

§ 193.10–90 Installations contracted for prior to March 1, 1968.

Installations contracted for prior to March 1, 1968, shall meet the following requirements:

(a) Except as specifically modified by this paragraph, the requirements of §§ 193.10–5 through 193.10–15 shall be complied with insofar as the number and general type of equipment is concerned.

(b) Existing equipment, except fire hose nozzles and low-velocity water spray applicators, previously approved but not meeting the applicable requirements of §§ 193.10–5 through 193.10–15, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs, alterations, and replacements may be permitted to the same standards as the original installations. However, all new installations or major replacements shall meet the applicable requirements in this subpart for new installations.

(c) The general requirements of § 193.10–5 (c) through (g), § 193.10–10 (d) through (m), and § 193.10–15 shall be complied with insofar as is reasonable and practicable.

(d) Each fire hose nozzle must meet § 193.10–10(i), and each low-velocity water spray applicator must meet § 193.10–10(j).

PART 196—OPERATIONS

145. The authority citation for Part 196 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 6101; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 196.03—[Removed]

146. Subpart 196.03 is removed.

Subpart 196.17—[Removed]

147. Subpart 196.17 is removed.

Subpart 196.18—[Removed]

148. Subpart 196.18 is removed.

149. In § 196.19–1, paragraphs (a), (b) and (c) are removed, paragraphs (d), (e) and (f) are redesignated as paragraphs (a), (b) and (c), respectively, and the new paragraph (a) is revised to read as follows:

§ 196.19–1 Data required.

* * * * *

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

* * * * *

150. Subpart 196.23 is removed.

§ 196.27–10 [Removed]

151. Section 196.27–10 is removed.

152. Subpart 196.33 is revised to read as follows:

Subpart 196.33—Communication Between Deckhouses

§ 196.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more that 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

153. Section 196.35–3 is revised to read as follows:

§ 196.35–3 Logbooks and records.

(a) The master or person in charge of an oceanographic research vessel that is required by 46 U.S.C. 11301 to have an official logbook may maintain the logbook on Form CG–706 or in the owner's format for an official logbook. Such logs shall be kept available for a review for a period of one year after the date to which the records refer or for the period of validity of the vessel's current certificate of inspection, whichever is longer. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 196.35–10 [Removed]

154. Section 196.35–10 is removed.

§ 196.37–45 [Removed]

155. Section 196.37–45 is removed.

156. Subpart 196.43 is revised to read as follows:

Subpart 196.43—Placard of Lifesaving Signals

Sec.
196.43–1 Application.
196.43–3 Availability.

§ 196.43–1 Application.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 196.43–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life as Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

Subpart 196.60—[Removed]

157. Subpart 196.60 is removed.

Subpart 196.75—[Removed]

158. Subpart 196.75 is removed.

Dated: December 8, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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December 20, 1995

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

1890 Institution Capacity Building Grants Program; Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

1890 Institution Capacity Building Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new part 3406 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program conducted under the authority of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318) and pursuant to annual appropriations made available specifically for an 1890 Institution Capacity Building Grants Program. This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

DATES: Written comments are invited from interested individuals and organizations. Comments must be received on or before January 19, 1996.

ADDRESSES: Comments should be sent to Dr. Jeffrey L. Gilmore, Grant Programs Manager, Office of Higher Education Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2251, Washington, D.C. 20250–2251. Comments may also be sent via electronic mail to jgilmore@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been reviewed and approved by the Office of Management and Budget (OMB) and given the OMB Document Nos. 0524–0022, 0524–0024, 0524–0030, and 0524–0033. The public reporting burden for the information collections contained in these regulations (Forms CSRS–662, CSRS–663, CSRS–708, CSRS–710, CSRS–711, CSRS–712, CSRS–713, and CSRS–1234 as well as the Proposal Summary and Proposal Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Analyst, OIRM, Ag Box 7630, Washington, D.C. 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Classification

This proposed rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Executive Order No. 12612

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

Executive Order No. 12778

This rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform, and the required certification has been made to OMB. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this proposed rulemaking.

Environmental Impact Statement

As outlined in 7 CFR Part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)), environmental data for the proposed project are to be provided to CSREES in order for a determination to be made as to the need of any further action.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

Accordingly, the Secretary recognized, on April 18, 1990, the findings made by Congress in section 301(a) of Public Law 99–498, October 17, 1986 (20 U.S.C. 1060), that the States and the Federal government have discriminated in the allocation of land and financial resources to support these institutions under the Morrill Act of 1862 and its progeny. In the above-referenced findings, Congress acknowledged, and the Secretary recognized, that these institutions were discriminated against in the award of Federal grants and contracts, and in the distribution of Federal resources generally which were intended to benefit institutions of higher education. The Secretary found that the capacity of the 1890 colleges and universities, including Tuskegee University, to develop programs to assist the Nation and the Department in producing food and agricultural science professionals

has suffered as a direct result of this discrimination.

The Secretary concluded that a capacity building grants program set aside for the 1890 land-grant colleges and universities, including Tuskegee University, was an appropriate remedial step to redress past inequities found by Congress to have occurred regarding these institutions. Subsequent to the Secretary's establishment of the program, Congress began making annual appropriations specifically for an 1890 Institution Capacity Building Grants Program.

This document proposes to establish Part 3406 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program. Under the authority of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318), and pursuant to annual appropriations made available specifically by Congress for an 1890 Institution Capacity Building Grants Program (see, e.g., Pub. L. No. 103–330), the Secretary conducts this institutional capacity building grants program.

This proposed rule establishes and codifies the administrative procedures to be followed annually in the solicitation of grant proposals, the evaluation of such proposals, and the award of grants under this program. The 1890 Institution Capacity Building Grants Program is competitive in nature and is intended to stimulate the development of high quality teaching and research programs at these institutions to build their capacities as full partners in the mission of the Department to provide more, and better-trained, professionals for careers in the food and agricultural sciences.

List of Subjects in 7 CFR Part 3406

Grant programs—agriculture. Agriculture Higher Education Programs, 1890 Institution Capacity Building Grants Program.

It is therefore proposed to amend Title 7, Subtitle B, Chapter XXXIV, of the Code of Federal Regulations by adding Part 3406 to read as follows:

PART 3406—INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

Subpart A—General Information

Sec.
3406.1 Applicability of regulations.
3406.2 Definitions.
3406.3 Institutional eligibility.

Subpart B—Program Description

3406.4 Purpose of the program.
3406.5 Matching funds.
3406.6 USDA agency cooperator requirement.
3406.7 General scope of program.
3406.8 Joint project proposals.
3406.9 Complementary project proposals.
3406.10 Use of funds for facilities.

Subpart C—Preparation of a Teaching Proposal

3406.11 Scope of a teaching proposal.
3406.12 Program application materials—teaching.
3406.13 Content of a teaching proposal.

Subpart D—Review and Evaluation of a Teaching Proposal

3406.14 Proposal review—teaching.
3406.15 Evaluation criteria for teaching proposals.

Subpart E—Preparation of a Research Proposal

3406.16 Scope of a research proposal.
3406.17 Program application materials—research.
3406.18 Content of a research proposal.

Subpart F—Review and Evaluation of a Research Proposal

3406.19 Proposal review—research.
3406.20 Evaluation criteria for research proposals.

Subpart G—Submission of a Teaching or Research Proposal

3406.21 Intent to submit a proposal.
3406.22 When and where to submit a proposal.

Subpart H—Supplementary Information

3406.23 Access to peer review information.
3406.24 Grant awards.
3406.25 Use of funds; changes.
3406.26 Monitoring progress of funded projects.
3406.27 Other Federal statutes and regulations that apply.
3406.28 Confidential aspects of proposals and awards.
3406.29 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3406.1 Applicability of regulations.

(a) The regulations of this part apply only to capacity building grants awarded to the 1890 land-grant institutions and Tuskegee University under the provisions of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(c)) to further the research, extension, and teaching programs in the food and agricultural sciences. This statute authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to enter into grants, or cooperative agreements, for periods not to exceed five years, with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other contractor or recipient, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture. Only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

(b) To the extent that funds are available, each year CSREES will publish a Federal Register notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The program area(s) to be supported (teaching, research, or both)

(ii) The proportion of the appropriation reserved for, or available to, teaching projects and research projects;

(iii) The targeted need area(s) in teaching and in research to be supported;

(iv) The degree level(s) to be supported;

(v) The maximum project period a proposal may request;

(vi) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(vii) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint projects will be counted toward the institutional maximum

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSRS–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or

equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The maximum number of proposals that may be submitted by an individual in any one targeted need area;

(v) The minimum project period a proposal may request;

(vi) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vii) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(viii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(ix) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(x) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year, including how grants awarded for complementary and joint projects will be counted toward the institutional maximum; and

(xi) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part prescribe that this is a competitive program; it is possible that an institution may not receive any grant awards in a particular year.

(f) The regulations of this part do not apply to grants for other purposes awarded by the Department of Agriculture under section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318) or any other authority.

§ 3406.2 Definitions.

As used in this part:

Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president of the 1890 Institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) a citizen or native resident of a State; or,

(2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Cost-sharing or *Matching* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

Department or *USDA* means the United States Department of Agriculture.

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328) that are the intended recipients of funds under programs established in Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 *et seq.*), including Tuskegee University.

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of ''Citizen or national of the United States'' in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

Grantee means the 1890 Institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant 1890 Institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of ''1890 Institution'' as specified in this section; the other institutions participating in a joint project proposal are not required to meet the definition of ''1890 Institution'' as specified in this section, nor required to meet the definition of ''college'' or ''university'' as specified in this section.

Peer review panel means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

Principal investigator/project director means the single individual designated by the grantee in the grant application

and approved by the Secretary who is responsible for the direction and management of the project.

Prior approval means written approval evidencing prior consent by an authorized departmental officer as defined in this section.

Project means the particular teaching or research activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic inquiry directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels.

Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment of the objectives of a grant awarded under this program.

§ 3406.3 Institutional eligibility.

Proposals may be submitted by any of the 16 historically black 1890 land-grant institutions and Tuskegee University. The 1890 land-grant institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State College; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University; North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University.

Subpart B—Program Description

§ 3406.4 Purpose of the program.

(a) The Department of Agriculture and the Nation depend upon sound programs in the food and agricultural sciences at the Nation's colleges and universities to produce well trained professionals for careers in the food and agricultural sciences. The capacity of institutions to offer suitable programs in the food and agricultural sciences to meet the Nation's need for a well trained work force in the food and agricultural sciences is a proper concern for the Department.

(b) Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

(c) The institutional capacity building grants program is intended to stimulate development of quality education and research programs at these institutions in order that they may better assist the Department, on behalf of the Nation, in its mission of providing a professional work force in the food and agricultural sciences.

(d) This program is designed specifically to build the institutional teaching and research capacities of the 1890 land-grant institutions through cooperative programs with Federal and non-Federal entities. The program is competitive among the 1890 Institutions and encourages matching funds on the part of the States, private organizations, and other non-Federal entities to encourage expanded linkages with 1890 Institutions as performers of research and education, and as developers of scientific and professional talent for the United States food and agricultural system. In addition, through this program, CSREES will strive to increase the overall pool of qualified job applicants from underrepresented groups in order to make significant progress toward achieving the objectives of work force diversity within the Federal Government, particularly the U.S. Department of Agriculture.

§ 3406.5 Matching support.

The Department strongly encourages and may require non-Federal matching support for this program. In the annual program solicitation, CSREES will announce any incentives that may be

offered to applicants for committing their own institutional resources or securing third party contributions in support of capacity building projects. CSREES may also announce any required fixed dollar amount or percentage of institutional cost sharing, if applicable.

§ 3406.6 USDA agency cooperator requirement.

(a) Each application must provide documentation that at least one USDA agency or office has agreed to cooperate with the applicant institution on the proposed project. The documentation should describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution, and describe the partnership effort between USDA and the 1890 Institution in regard to the proposed project. Such USDA agency cooperation may include, but is not limited to, assisting the applicant institution with proposal development, identifying possible sources of matching funds, securing resources, implementing funded projects, providing technical assistance and expertise throughout the life of the project, participating in project evaluation, and disseminating project results.

(b) The designated CSREES agency contact can provide suggestions to institutions seeking to secure a USDA agency cooperator on a particular proposal.

(c) USDA 1890 Liaison Officers, and other USDA employees serving on the campuses of the 1890 colleges and universities, may assist with proposal development and project execution to satisfy the cooperator requirement, in whole or in part, but may not serve as project directors or principal investigators.

(d) Any USDA office responsible for administering a competitive or formula grants program specifically targeted to 1890 Institutions may not be a cooperator for this program.

§ 3406.7 General scope of program.

This program supports both teaching project grants and research project grants. Such grants are intended to strengthen the teaching and research capabilities of applicant institutions. Each 1890 Institution may submit one or more grant applications for either category of grants (as allowed by the annual program notice). However, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

§ 3406.8 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3406.2, which address regional or national problems and which will result overall in strengthening the 1890 university system. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3406.9 Complementary project proposals.

Institutions may submit complementary project proposals as defined in § 3406.2. Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3406.10 Use of funds for facilities.

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching or research spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Teaching Proposal

§ 3406.11 Scope of a teaching proposal.

The teaching component of the program will support the targeted need area(s) related to strengthening teaching programs as specified in the annual program announcement. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. A proposal may be directed toward the undergraduate or graduate level of study as specified in the annual program announcement. Targeted need areas for teaching programs will consist of one or more of the following:

(a) Curricula design and materials development. (1) The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) Faculty preparation and enhancement for teaching. (1) The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and

advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3406.11(b) must be an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) Instruction delivery systems. (1) The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(viii) Symposia, forums, regional or national workshops, etc.

(d) Scientific instrumentation for teaching. (1) The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) Student experiential learning. (1) The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) Student recruitment and retention. (1) The purpose of this need area is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3406.11(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

§ 3406.12 Program application materials—teaching.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit teaching grant applications under the program.

§ 3406.13 Content of a teaching proposal.

(a) Proposal cover page. (1) Form CSRS–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSRS–712 must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant institution.

(3) The title of the teaching project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties,

(4) In block 7. of Form CSRS–712, enter ''1890 Institution Capacity Building Grants Program.''

(5) In block 8.a. of Form CSRS–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, limit the selection to three areas. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) Table of contents. For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should being immediately following the summary documentation of USDA agency cooperation.

(c) USDA agency cooperator. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency of office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used.

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(B) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) Project summary. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation section. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a statement of how the project will enhance the teaching capacity of the institution; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) Resubmission of a proposal. (1) Resubmission of previously unfunded proposals. (i) If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSRS–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed. (ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) Resubmission of previously funded proposals. Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding.

(f) Narrative of a teaching proposal. The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) Potential for advancing the quality of education.

(i) Impact.

(A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Also discuss the probabilities of its adaptation by other institutions. For example, can the project serve as a model for others?

(ii) Continuation plans. Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) Innovation. Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) Products and results. Explain the kinds of results and products expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students and increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) Overall approach and cooperative linkages.

(i) Proposed approach.

(A) Objectives. Cite and discuss the specific objectives to be accomplished under the project.

(B) Plan of operation.

(*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to enhance its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) Timetable. Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) Evaluation plans.

(A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f)(2)(ii)(A) of this section.

(iii) Dissemination plans. Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) Partnerships and collaborative efforts.

(A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate

academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) Institutional capacity building.

(i) Institutional enhancement. Explain how the proposed project will strengthen the teaching capacity as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty's expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(ii) Institutional commitment.

(A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) Key personnel. A Form CSRS–708, ''Summary Vita-Teaching Proposal,'' should be included for each key person associated with the project.

(h) Budget and cost-effectiveness. (1) Budget form.

(i) Prepare Form CSRS–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) Matching funds. When documenting matching contributions, use the following guidelines:

When preparing the column of Form CSRS–713 entitled ''Applicant Contributions To Matching Funds,'' only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution,which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) Chart on shared budget for joint project proposal.

(i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) The amount of funds to be disbursed to those institutions; and

(C) The way in which such funds will be used in accordance with items A through L of Form CSRS–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) Budget narrative.

(i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student stipends/scholarships, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area or promote coalition building that could lead to future ventures.

(iv) Includes the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) Current and pending support. Each applicant must complete Form CSRS–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) Appendix. Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of a proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Review and Evaluation of a Teaching Proposal

§ 3406.14 Proposal review—teaching.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.15 Evaluation criteria for teaching proposals.

The maximum score a teaching proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the Federal Register, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation Criterion	Weight (points)
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15

Evaluation Criterion	Weight (points)
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	10
(4) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	15
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15
(d) Personnel Resources:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal:	
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5

Subpart E—Preparation of a Research Proposal

§ 3406.16 Scope of a research proposal.

The research component of the program will support projects that address high-priority research initiatives in areas such as those illustrated in this section where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Applicants are also encouraged to include in their proposals a library enhancement component related to the initiative(s) for which they have prepared their proposals.

(a) Studies and experimentation in food and agricultural sciences.

(1) The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences.

(2) Examples include, but are not limited to:

(i) Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products).

(ii) Conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products.

(iii) Propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses).

(iv) Identify control factors influencing consumer demand for agricultural products.

(v) Analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups.

(vi) Other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) Centralized research support systems.

(1) The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses.

(2) Examples include, but are not limited to:

(i) Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology.

(ii) Computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.).

(iii) Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) Technology delivery systems.

(1) The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits.

(2) Examples include, but are not limited to:

(i) Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc.

(ii) Efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) Other creative proposals. The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

§ 3406.17 Program application materials—research.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit research grant applications under the program.

§ 3406.18 Content of a research proposal.

(a) Proposal cover page. (1) Form CSRS–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of Form CSRS–712 must contain the pen-and-ink signatures of the principal investigator(s) and Authorized Organizational Representative for the applicant institution.

(3) The title of the research project shown on the ''Higher Education Proposal Cover Page'' must be brief (80–character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSRS–712, enter ''Capacity Building Grants Program.''

(5) In block 8.a. of Form CSRS–712, enter ''Research.'' In block 8.b. identify the code of the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, please limit your selection to three areas. This information will be used by the program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or joint project proposal as defined in § 3406.2. If it is not a complementary project proposal or a joint project proposal, identify it as a regular proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) Table of contents. For ease of locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) USDA agency cooperator. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(B) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) Project summary. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviews prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, clearly state this fact and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the principal investigator, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key person responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text should not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: the objective of the project, a synopsis of the plan of operation, a statement of how the project will enhance the research capacity of the institution, a description of how the project will enhance research in the food and agricultural sciences, and a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) Resubmission of a proposal. (1) Resubmission of previously unfunded proposals. (i) If the proposal has been submitted previously, but was not funded, such should be indicated in block 13. On Form CSRS–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal.

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in a tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) Resubmission of previously funded proposals. Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Principal investigators who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for future funding.

(f) Narrative of a research proposal. The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) Significance of the problem.

(i) Impact.

(A) Identification of the problem or opportunity. Clearly identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(B) Rationale. Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in advancing food and agricultural research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period.

(C) Literature review. Include a comprehensive summary of the pertinent scientific literature. Citations may be footnoted to a bibliography in the Appendix. Citations should be accurate, complete, and adhere to an acceptable journal format. Explain how such knowledge (or previous findings) is related to the proposed project.

(D) Current research and related activities. Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(ii) Continuation plans. Discuss the likelihood or plans for continuation or expansion of the project beyond USDA support. Discuss, as applicable, how the institution's long-range budget, and administrative and academic plans, provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions.

(iii) Innovation. Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(iv) Products and results. Explain the kinds of products and results expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) Overall approach and cooperative linkages.

(i) Approach.

(A) Objectives. Cite and discuss the specific objectives to be accomplished under the project.

(B) Plan of operation. The procedures or methodologies to be applied to the proposed project should be explicitly stated. This section should include, but not necessarily be limited to a description of:

(*1*) The proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out.

(*2*) Procedures and techniques to be employed, including their feasibility.

(*3*) Means by which data will be collected and analyzed.

(*4*) Pitfalls that might be encountered.

(*5*) Limitations to proposed procedures

(C) Timetable. Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) Evaluation plans.

(A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any performance data to be collected and analyzed, and explain the methodologies that will be used to determine the extent to which the needs underlying the project are being met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3406.13(f)(2)(ii)(A).

(iii) Dissemination plans. Provide plans for disseminating project results and products including the possibilities for publications. Identify target audiences and explain methods of communication.

(iv) Partnerships and collaborative efforts.

(A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural science higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) Institutional capacity building.

(i) Institutional enhancement. Explain how the proposed project will strengthen the research capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students—particularly those from underrepresented groups.

(ii) Institutional commitment.

(A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the

institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supposed by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) Key personnel. A From CSRS–710, ''Summary Vita—Research Proposal,'' should be included for each key person associated with the project.

(h) budget and cost-effectiveness.

(1) Budget form.

(i) Prepare Form CSRS–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, these administrative provisions, and can be justified as necessary for successful conduct of the proposed project.

(ii) The approved negotiated research rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds. In the event that a proposal reflects an incorrect indirect cost rate and is recommended for funding, the correct rate will be applied to the approved budget in the grant award.

(2) Matching funds. When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form CSRS–713 entitled ''Applicant Contributions To Matching Funds,'' only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for an incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) Chart on shared budget for joint project proposal.

(i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) The amount of funds to be disbursed to those institutions; and

(C) The way in which such funds will be used in accordance with items A through L of Form CSRS–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) Budget narrative.

(i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes research value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a high-priority research initiatives(s) or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the

employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area, estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) Current and pending support. Each applicant must complete Form CSRS–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) Appendix. Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in the Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in the Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information or previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the principal investigator(s). The Appendix must be referenced in the proposal narrative.

(k) Special considerations. A number of situations encountered in the conduct of research require special information or supporting documentation before funding can be approved for the project. If such situations are anticipated, proposals must so indicate via completion of Form CSRS–662, ''Assurance Statement(s).'' It is expected that some applications submitted in response to these guidelines will involve the following:

(1) Recombinant DNA research. All key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. All applicants proposing to use recombinant DNA techniques must so indicate by checking the appropriate box on Form CSRS–712, ''Higher Education Proposal Cover Page,'' and by completing the applicable section of Form CSRS–662. In the event a project involving recombinant DNA or RNA molecules results in a grant award, the Institutional Biosafety Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(2) Protection of human subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this is contained in the Department of Agriculture regulations under 7 CFR part 1c. All applicants who propose to use human subjects for experimental purposes must indicate their intention by checking the appropriate block on Form CSRS–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form CSRS–662. In the event a project involving human subjects results in a grant award, the Institutional Review Board of the proposing institution must approve the research plan before CSREES will release grant funds.

(3) Laboratory animal care. Responsibility for the humane care and treatment of laboratory animals used in any grant project supported with funds provided by CSREES rests with the performing organization. All key project personnel and all endorsing officials of the proposing organization are required to comply with the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of laboratory animals. All applicants proposing a project which involves the use of laboratory animals must indicate their intention by checking the appropriate block on Form CSRS–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form CSRS–662. In the event a project involving the use of living vertebrate animals results in a grant award, the Institutional Animal Care and Use Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(l) Compliance with the National Environmental Policy Act (NEPA). As outlined in 7 CFR part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969), environmental data for the proposed project is to be provided to CSREES in order for a determination to be made as to the need for any further action such as preparation of an environmental assessment (EA) or environmental impact statement (EIS).

(1) NEPA determination statement. In order for a determination to be made, pertinent information regarding environmental activities is necessary; therefore, Form CSRS–1234, ''National Environmental Policy Act Exclusions Form,'' along with supporting documentation, must be included in the proposal indicating whether or not the project falls under USDA categorical exclusions as defined in 7 CFR 1b.3 (and restated at 7 CFR 3407.6(a)(1)) or CSREES categorical exclusions defined at 7 CFR 3407.6(a)(2) (i) and (ii). The information should be identified in the Table of Contents as ''NEPA Determination Statement'' and Form CSRS–1234 and the supporting documentation should be placed at the back of the proposal.

(2) Exceptions to categorical exclusions. An EA or EIS shall be prepared for an activity which is normally within the purview of categorical exclusion where it is determined by CSREES that substantial controversy on environmental grounds exists or that other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Subpart F—Review and Evaluation of a Research Proposal

§ 3406.19 Proposal review—research.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide

optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.20 Evaluation criteria for research proposals.

The maximum score a research proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the Federal Register, the peer review panel will consider the following criteria and weights to evaluate proposals submitted.

Evaluation Criterion	Weight (points)
(a) Significance of the problem:	
This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the argicultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a State, regional, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution or the grant period?	15
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study?	10
(4) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agencie(s)? Will the project encourage and facilitate better working relationships in the university science community, as well as between universities and the public or private sector? Does the project encourage appropriate multidisciplinary collaboration? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance research quality or supplement available resources?	15
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from underrepresented groups	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15
(d) Personnel Resources:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	10
(e) Budget and cost-effectiveness:	

Evaluation Criterion	Weight (points)
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal:	
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)? ...	5

Subpart G—Submission of a Teaching or Research Proposal

§ 3406.21 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSRS–711, ''Intent to Submit a Proposal,'' provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3406.22 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart H—Supplementary Information

§ 3406.23 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

§ 3406.24 Grant awards.

(a) General. Within the limit of funds available for such propose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) Organization management information. Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) Notice of grant award. The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of principal investigator(s)/project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intend to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) Obligation of the Federal Government. Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3406.25 Use of funds; changes.

(a) Delegation of fiscal responsibility. The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) Change in project plans. (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) Changes in project period. The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer.

(d) Changes in approved budget. Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involved transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3406.26 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, D.C. or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, research project management, advancing a field of science, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's planned activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award. These reports are in addition to the annual Current Research Information System (CRIS) reports required for all research grants under the award's ''Special Terms and Conditions.''

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: a review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3406.27 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and other Nonprofit Institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out

in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, D.C., this 11th day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–30625 Filed 12–19–95; 8:45 am]

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federal register

Wednesday
December 20, 1995

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA53

Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation revising the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). This regulation will provide guidance to employers that sponsor contributory plans, including plans complying with section 401(k) of the Internal Revenue Code, as well as fiduciaries, participants, and beneficiaries of such plans.

DATES: Written comments and requests to testify concerning the proposed regulation must be received by February 5, 1996. The Department has scheduled a public hearing on this proposal on January 24, 1995, and, if necessary, on January 25, 1995. The hearing will begin at 10:00 am on both days.

ADDRESSES: Interested persons are invited to submit written comments and requests to testify concerning this proposed regulation to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Participant Contribution Regulation. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave., NW., Washington, DC 20210. Written comments may also be sent by the Internet to the following address: hinz@access.digex.net. The hearing on this proposal will be held in Room N–3437A, Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–7461; or William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In 1988, the Department of Labor (the Department) published a final regulation defining when certain monies that a participant pays to, or has withheld by, an employer for contribution to a plan are ''plan assets'' for purposes of Title I of ERISA and the related prohibited transaction provisions of the Code.[1] 53 FR 17628 (May 17, 1988). The final regulation provided that the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event to exceed 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or 90 days from the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).[2] This final rule was based on a record developed with respect to a proposed regulation published in 1979. 44 FR 50363 (August 28, 1979).

Except as provided in ERISA § 403(b), plan assets are required to be held in trust by one or more trustees.[3] ERISA § 403(a), 29 U.S.C. 1103(a). In addition, ERISA's fiduciary responsibility provisions apply to the management of plan assets. Among other things, these provisions make clear that the assets of a plan may not inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan. ERISA §§ 403–404, 29 U.S.C. 1103–1104. They also prohibit a broad array of transactions involving plan assets. ERISA §§ 406–408, 29 U.S.C. 1106–1108. Employers who fail to transmit promptly participant contributions, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions.

As was noted in the preamble to the final regulation published in 1988, the Department of Justice takes the position that, under 18 U.S.C. 664, the embezzlement, conversion, abstraction, or stealing of ''any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or any fund connected therewith'' is a criminal offense, and that under such language, criminal prosecution may go forward in situations in which the participant contributions is not a plan asset for purposes of Title I of ERISA. The final regulation defined when participant contributions become ''plan assets'' only for the purposes of Title I of ERISA and the related prohibited transaction excise tax provisions of the Code. The Department reiterates that this regulation may not be relied upon to bar criminal prosecutions pursuant to 18 U.S.C. 664.

Similarly, the Department wishes to reemphasize its view, expressed in the preamble to the final regulation, that in circumstances in which the employer clearly converts participant contributions to its own use, such amounts are considered ''segregated,'' and thus will be ''plan assets''.

The Need for a Proposed Regulation

Although the Department believes that, in the vast majority of contributory employee benefit plans, participant contributions are handled with integrity, recent investigations conducted by the Department have revealed numerous violations related to employers' delay in transmitting or failing to transmit to employee benefit plans amounts that a participant or beneficiary pays to an employer, or

[1] The Secretary of Labor has authority to issue regulations relating to section 4975 of the Internal Revenue Code pursuant to section 102 of Reorganization Plan No. 4 of 1978. 5 U.S.C. App. 165. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[2] The Department has taken the position that elective contributions to an employee benefit plan, whether made pursuant to a salary reduction agreement or otherwise, constitute amounts paid to or withheld by an employer (*i.e.*, participant contributions) within the scope of § 2510.3–102, without regard to the treatment of such contributions under the Internal Revenue Code. See 53 FR 29660 (Aug. 8, 1988).

[3] ERISA § 403(b) contains a number of exceptions to the trust requirement for certain types of assets, including assets which consist of insurance contracts, and for certain types of plans. In addition, the Secretary has issued a technical release, T.R. 92–01, which provides that, with respect to certain welfare plans (e.g., cafeteria plans), the Department will not assert a violation of the trust or certain reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations, involving such plans solely because of a failure to hold participant contributions in trust. 57 FR 23272 (June 2, 1992), 58 FR 45359 (Aug. 27, 1993).

amounts that employers withhold from participants' wages, for contribution to the plans. Evidence uncovered in ongoing investigations indicates that such delays are not uncommon.[4] The above described recent enforcement activities focused on participant contribution indicate a significantly higher frequency of violations for such investigations than the Department encounters in general.[5]

In addition, the Department, responding to requests for technical assistance from employers and participants, has received information that many employers who receive participant contributions are under the misimpression that the current regulation permits a delay of up to 90 days in segregating such contributions, even if the participant contributions can reasonably be segregated much sooner. The Department has also received similar information from a variety of other sources. Such delays deprive participants of earnings on their contributions and increase the risk to participants and their beneficiaries that their contributions will be lost due to the employer's insolvency or misappropriation by the employer.

In order to better protect the security of participant contributions to employee benefit plans, the Department believes that the final regulation published in 1988 must be revised. It is important to clarify that participant contributions become plan assets as soon as they can reasonably be segregated from the employer's general assets. In addition, the Department believes that the 90-day maximum period under 1988 regulation is too long, given the abuses that have been uncovered by the Department's investigations, and improvements in cash management and payroll processing practices since the final regulation was adopted.

The Proposed Regulation

This document contains a proposal to revise the regulation at 29 CFR 2510.3–102 by changing the maximum period during which participant contributions to an employee benefit may be treated as other than ''plan assets''. Under the current regulation, the maximum period is 90 days from the date on which the participant contributions are received by the employer (for amounts that participants or beneficiaries pay to the employer) or would otherwise have been payable to the participants in cash (for amounts that the employer withholds from the participants' wages).

Under the proposed rule, the maximum period for an employer to transmit participant contributions to the plan would be the same number of days as the period in which the employer is required to deposit withheld income taxes and employment taxes under rules promulgated by the Internal Revenue Service (IRS). The currently applicable rules are codified at 26 CFR 31.6302–1.[6] In general, these rules require employers who have reported more than $50,000 of withheld income taxes and employment taxes for a prior 12-month ''lookback'' period (defined as ''semi-weekly depositors'') to make tax deposits to a Federal Reserve Bank or authorized financial institution within a few days of withholding from wages. Employers who have reported $50,000 or less of withheld income taxes and employment taxes in the lookback period are defined as ''monthly depositors'' and must make such deposits on or before the 15th day of the month following the month in which the employees' wages are paid.

In addition, the IRS regulations reflect the statutory requirement that an employer who has accumulated on any day $100,000 in withheld income taxes and employment taxes must deposit such taxes by the next banking day. 26 U.S.C. 6302(g). If an employer accumulates less than a $500 tax liability during a calendar quarter, no deposits are required; the tax is paid with the filing of the tax return for the quarter.[7] The Department solicits comments on the appropriateness of including these two special rules to the general tax deposit rules in the IRS regulation.

The proposed rule would require employers who cannot reasonably segregate participant contributions at an earlier date to treat such amounts as plan assets within the same time frame that the employer is required to segregate and deposit withheld income taxes and employment taxes. The following table illustrates the basic time periods specified in the IRS regulations:

Type of depositor	Date withheld	Date deposit due
Semi-Weekly Depositor (more than $50,000 of Federal Income, Social Security and Medicare taxes (collectively, employment taxes) reported for 12-month period ending last June 30).	Wednesday, Thursday, and/or Friday	Following Wednesday.
	Saturday, Sunday, Monday and/or Tuesday	Following Friday.
Monthly Depositor ($50,000 or less of employment taxes reported for 12-month period ending on the previous June 30).	In any day during a calendar month	By the 15th of the following calendar month.
Either semi-weekly or monthly depositor, if $100,000 or more in employment taxes are accumulated on any date.	Not relevant	Next banking day after the $100,000 in employment taxes was accumulated.

For example, a semi-weekly depositor that pays its employees on Wednesday, December 13, is required to deposit withheld income taxes and employment taxes by the following Wednesday (December 20). Under the proposed rule, any participant contributions withheld on December 13 would become plan assets as soon as they could reasonably be segregated from the employer's general assets, but no later than December 20. Participant contributions that are paid separately by employees or former employees to the employer would be subject to the same time frames. For example, if a semi-weekly depositor receives a participant's payment on Monday,

[4] In the Spring of 1995 PWBA began a project to investigate misuse of employee contributions to employee benefit plans and in particular in 401(k) plans. As of October 31, 1995 there were 417 employee contribution investigations open and 130 cases were closed during the year. More than $3.7 million has been recovered through voluntary compliance in situations where employee contributions were not placed in trust for participants.

[5] Of the 130 closed employee contribution cases, 44, or 33.8 percent of closed cases, resulted in findings of violations of ERISA's fiduciary provisions. This compares to a finding of fiduciary violations in 12 percent of all other closed cases in FY 95.

[6] See also IRS Publication 15 (Cat. No. 10000W) Circular E, Employer's Tax Guide (Rev. January 1995) and IRS Notice 931 (Rev. October 1995).

[7] The Department recognizes that mistakes may occur in the processing of participant contributions. It is the Department's view that ERISA does not prevent the return of any mistaken contributions nor the ability to make correcting contributions after the mistakes are discovered. *See* ERISA § 403(c), 29 U.S.C. 11103(c).

December 18, the payment amount would become plan assets as soon as they could reasonably be segregated from the employer's general assets, but no later than the following Friday, December 22.

Because the IRS tax deposit rules are generally applicable to employers, the Department expects that employers who sponsor contributory employee benefit plans are familiar with and have systems in place to comply with the IRS requirements.[8] Thus, the Department believes that applying these same rules in determining when the maximum period beyond which participant contributions must be treated as plan assets should not result in serious inconvenience or expense for such employers. The Department believes that currently available cash management and payroll processing technology allows the segregation of participant contributions within the maximum period proposed in this document. Furthermore, the final regulation published in 1988 requires that participant contributions be treated as plan assets as soon as they can reasonably be segregated from the employer's general assets. As a result, this proposed change will not be material for many employers who have complied with the final regulation published in 1988. The Department recognizes that some employers perceive difficulties in the transfer of participant contributions to the plan that they do not have in the deposit of federal employment taxes. The Department solicits comments as to any specific burdens and associated costs of this kind. The Department also requests comments on the transition period needed for employers and service providers, especially small businesses, to make changes in practices that may be necessary to comply with the proposal if it is adopted.

Although the proposed rule would not change the requirement that participant contributions be treated as plan assets at the earliest date they can reasonably be segregated from the employer's general assets, changing the regulations to provide for an outer limit that conforms to IRS requirements will allow the Department and plan participants to more quickly and easily determine that a violation has occurred. This will assist the Department in its increased monitoring and enforcement in this area, as it reduces the room for argument as to how rapidly participant contributions must be segregated from the employer's general assets. In addition, changing the ninety-day limit for treating participant contributions as other than ''plan assets'' reduces the risk of loss that exists when employers improperly hold participant contributions in their general assets for the maximum period rather than segregating them from the employer's general assets at the earliest reasonable date.

The proposed rule does not include an alternative proposal for a maximum period based on a fixed period of days (such as 15 days), but the Department may consider adopting such a rule in place of the rule described above if adopting the IRS tax deposit rules as the maximum period for segregating participant contributions would place an undue burden on plan sponsors. Commenters may wish to address the advantages or disadvantages of using a fixed period of days or some other formulation for a maximum period when they provide comments on the proposed rule.

The Department also welcomes comments on the advisability of other measures that it might consider to address the problem of delays in transmitting participant contributions to plans, such as, for example, requirements for more frequent disclosure to participants of participant contributions and account balances by the plan.

This document also modifies the language in section 2510.3–102 to emphasize that the assets of a plan include participant contributions as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. Although this modification would not change the effect of the existing regulation, the Department expects that the proposed new language will reduce the likelihood that employers will incorrectly believe that the maximum period in the proposed rule is a safe harbor and that they may delay the segregation of participant contributions up to the maximum period.

Effective Date of Regulation

Pursuant to the requirements of the Administrative Procedure Act at 5 U.S.C. 553(b), the Department is publishing this notice of proposed rulemaking for notice and comment and will promulgate this rule in final form subsequent to such comment period. The Department expects to issue a final rule 45 days following the close of the comment period. The Department has determined to propose that the final rule will be effective 60 days after its publication, which the Department believes will allow sufficient time for an appropriate transition to the new maximum periods. The Department solicits comments regarding the appropriate effective date for the final regulation.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. The regulation would describe when contributions made by a participant of a plan subject to ERISA or to the related prohibited transaction excise tax provisions of the Internal Revenue Code must be transmitted to the plan by an employer withholding the contributions. The Department solicits comments on whether the proposal is likely to have a significant economic impact on small entities. The Department also requests comments from small entities regarding what, if any, special problems they anticipate they may encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize these problems.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities.

Pursuant to the terms of the Executive Order, the Department has determined that this regulatory action is a ''significant regulatory action'' as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Thus, the Department believes this notice is ''significant,'' and subject to OMB review on that basis. The Department also solicits comments on potential economic effects of this proposed rule in the context of Executive Order 12866, and any evidence with respect to whether or not this proposed rule may be ''economically significant''.

Paperwork Reduction Act

The regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it does not

[8] The Department understands that most employers who sponsor section 401(k) plans are ''semi-weekly depositors'' under the IRS rules.

contain an ''information collection request'' as defined in 44 U.S.C. 3502(11).

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (Apr. 21, 1987).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86 (51 FR 3521, January 28, 1986), 1–87 (52 FR 13139, April 21, 1987), and Labor Management Services Administration Order No. 2–6.

Section 2510.3–40 is also issued under sec. 3(40), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)).

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), 3 CFR 1978 Comp. 332 and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), 3 CFR 1978 Comp. 332.

2. Section 2510.3–102 is revised to read as follows:

2510.3–102 Definition of ''plan assets''—participant contributions.

(a) *General rule.* For purposes of Subtitle A and Parts 1 and 4 of Subtitle B of Title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets.

(b) *Maximum time period.* In no event shall the date determined pursuant to paragraph (a) of this section occur later than the end of period of time during which the employer is required to make federal tax deposits for withheld income taxes and taxes under the Federal Insurance Contributions Act under regulations issued at 26 CFR 31.6302–1, measured from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(c) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer W is a small company with a small number of employees at a single payroll location. W maintains a plan under section 401(k) of the Internal Revenue Code in which all of its employees participate. W's practice is to issue a single check to the trust that is maintained under the plan in the amount of the total withheld employee contributions within two days of the date on which the employees are paid. Under applicable Internal Revenue Service federal tax deposit rules, W is a ''monthly depositor'' as defined at 26 CFR 31.6302–1(c)(1). Under these rules W must deposit withheld federal income taxes and employment taxes no later than the 15th of the month following the month in which the relevant wages are paid. In view of the relatively small number of employees and the fact that they are paid from a single location, W could reasonably be expected to transmit participant contributions to a trust within two days after the employee's wages are paid. Therefore, the assets of W's 401(k) plan include the participant contributions attributable to any pay period as of the date two days from the close of such period, even though IRS federal tax deposit rules allow W substantially more time in which to make tax deposits.

(2) Employer X is a large national corporation which sponsors a section 401(k) plan. X has several payroll centers and uses an outside payroll processing service to pay employee wages and process deductions. Each payroll center has a different pay period. Each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions and provides the outside payroll processor the data necessary to prepare employee paychecks and process deductions. The payroll processing service has adopted a procedure under which it issues the employees' paychecks when due and deducts all payroll taxes and elective employee deductions. It deposits withheld income and employment payroll taxes within the time frame specified by 26 CFR 31.6302–1 and forwards a computer data tape representing the total payroll deductions for each employee, for a month's worth of pay periods, to a centralized location in X, where the data tape is checked for accuracy. A single check representing the aggregate participant contributions for the month is issued to the plan by the employer. X believes that this procedure, which takes 7 days after receipt of the date tape to complete, permits segregation of participant contributions at the earliest practicable time and avoids mistakes in the allocation of contribution amounts for each participant. X, however, is a ''semi-weekly depositor'' under the Internal Revenue Service's Federal Deposit Rules and makes Federal tax deposits within the time frames, set forth in those IRS rules. Under paragraphs (a) and (b) of this section, the assets of the plan include the participant contributions as soon as X could reasonably be expected to segregate the contributions from its general assets, but in no event later than the date on which the employer would be required to deposit withheld income taxes and employment taxes under 26 CFR 31.6302–1. The participant contributions become plan assets no later than end of the time period within which X is required to deposit withheld income taxes and employment taxes.

(3) Employer Y is medium-sized company which maintains a self-insured contributory group health plan. Several former employees have elected, pursuant to the provisions of ERISA § 602, 29 U.S.C. 1162, to pay Y for continuation of their coverage under the plan. Y is a semi-weekly depositor of withheld Federal income taxes and employment taxes. Under paragraphs (a) and (b) of this section, the assets of the plan include the former employees' payments as soon as Y could reasonably be expected to segregate the payments from its general assets, but in no event later than the date on which Y would be required to deposit the payment amounts if the payments were withheld from Federal income taxes or employment taxes. A former employee's payment received on a Monday would have become plan assets no later than the following Friday.

(d) *Effective date.* This section is effective 60 days after date of publication of final regulation.

Signed at Washington, DC, this 14th day of December 1995.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–30782 Filed 12–19–95; 8:45 am]

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federal register

Wednesday
December 20, 1995

Part VI

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Capital; Capital Adequacy Guidelines; Joint Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–28]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0849]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB54

Capital; Capital Adequacy Guidelines

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and the FDIC (Agencies) are amending their respective risk-based capital guidelines to modify the definition of the OECD-based group of countries. The amendment excludes from the OECD-based group of countries any country that has rescheduled its external sovereign debt within the previous five years. The amendment also clarifies that the OECD-based group of countries includes all countries that are members of the OECD, regardless of their date of entry into the OECD. The effect of the amendment would be to increase the amount of capital that banks are required to hold against claims on the governments and banks of an OECD country, in the event that the country were to reschedule its external sovereign debt. This action is being taken to conform with a change in the Basle Accord on risk-based capital that was adopted by the Basle Committee on Banking Supervision (Basle Committee) on April 15, 1995.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: *OCC:* Geoffrey White, Senior International Economic Advisor, International Banking and Finance Department, (202) 874–5235; Saumya Bhavsar, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Roger Cole, Deputy Associate Director, (202) 452–2618; Norah Barger, Manager, (202) 452–2402; Robert Motyka, Supervisory Financial Analyst, (202) 452–3621; Division of Banking Supervision and Regulation; or Greg Baer, Managing Senior Counsel, Legal Division, (202) 452–3236; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the hearing impaired *only,* Telecommunication Device for the Deaf, Dorothea Thompson, (202) 452–3544.

FDIC: For supervisory purposes, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision, (202) 898–8904; for legal purposes, Dirck A. Hargraves, Attorney, Legal Division, (202) 898–7049; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 1988, the central bank governors of the Group of Ten (G–10) countries endorsed a framework for international risk-based capital guidelines entitled ''International Convergence of Capital Measurement and Capital Standards'' (commonly referred to as the Basle Accord).[1] Under the framework, risk-weighted assets are calculated by assigning assets and off-balance-sheet items to broad categories based primarily on their credit risk: that is, the risk that a banking organization will incur a loss due to an obligor or counterparty default on a transaction. Risk weights range from zero percent, for assets with minimal credit risk (such as U.S. Treasury securities), to 100 percent, which is the risk weight that applies to most private sector claims, including commercial loans. In 1989, the Agencies adopted risk-based capital guidelines implementing the Basle Accord for the banking organizations they supervise.

While the Basle Accord focuses primarily on credit risk, it also incorporates country transfer risk considerations. Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor.

In addressing transfer risk, the Basle Committee members examined several methods for assigning obligations of foreign countries to the various risk categories. Ultimately, the Basle Committee decided to use a defined group of countries considered to be of high credit standing as the basis for differentiating claims on foreign governments and banks. For this purpose, the Basle Committee determined this group to be the full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.[2] These countries, referred to in the Agencies' risk-based capital guidelines as the OECD-based group of countries, encompass most of the world's major industrial countries, including all members of the G–10 and the European Union.

Under both the Basle Accord and the Agencies' risk-based capital guidelines, claims on the governments and banks of the OECD-based group of countries generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD countries. Specifically, the Agencies' guidelines provide for the following treatment:

- Direct claims on, and the portions of claims that are directly and unconditionally guaranteed by, OECD-based central governments (including central banks) are assigned to the zero percent risk weight category. Corresponding claims on the central government of a country outside the OECD-based group are assigned to the zero percent risk weight category only to the extent that the claims are denominated in the local currency and the bank has local currency liabilities in that country.
- Claims conditionally guaranteed by OECD-based central governments and

[1] The Basle Accord was proposed by the Basle Committee, which comprises representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices; liberal trade policies; and the absence of exchange controls. Full members of the OECD at the time the Basle Accord was endorsed included Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In May 1994, Mexico was accepted as a full member of the OECD. In addition, Saudi Arabia has concluded special lending arrangements associated with the IMF's General Arrangements to Borrow.

claims collateralized by securities issued or guaranteed by OECD-based central governments generally are assigned to the 20 percent risk weight category. The same types of claims on non-OECD countries are assigned to the 100 percent risk category.

- Long-term claims on non-OECD banks are assigned to the 100 percent risk category, rather than to the 20 percent risk category accorded to long-term claims on OECD banks. (Short-term claims on all banks are assigned to the 20 percent risk weight category.)
- General obligation bonds that are obligations of states or other political subdivisions of the OECD-based group of countries are assigned to the 20 percent risk category. Revenue bonds of such political subdivisions are assigned to the 50 percent risk category. General obligation and revenue bonds of political subdivisions of non-OECD countries are assigned to the 100 percent risk category.

Recently, the OECD has taken steps to expand its membership. In light of these steps, the Basle Committee was urged to clarify an ambiguity in the Basle Accord as to whether the OECD members qualifying for the lower risk weights include only those members that were members of the OECD when the Basle Accord was endorsed in 1988, or all members, regardless of their date of entry into the OECD. The Basle Committee also reviewed the overall appropriateness of the criteria the Basle Accord uses to determine whether claims on a foreign government or bank qualify for placement in a lower risk category. As part of this review, the Basle Committee reassessed whether membership in the OECD (or the conclusion of special lending arrangements with the IMF) would, by itself, be sufficient to ensure that only countries with relatively low transfer risk would qualify for lower risk weight treatment.

On July 15, 1994, the Basle Committee clarified that the reference in the Basle Accord to OECD members applies to all current members of the organization. The Basle Committee also stated its intention, subject to national consultation, to amend the definition of the OECD-based group of countries in the Basle Accord in order to exclude from lower risk weight treatment any country within the OECD-based group of countries that had rescheduled its external sovereign debt within the previous five years. The Basle Committee adopted this change in the definition of the OECD-based group of countries on April 15, 1995.

On October 14, 1994, the Board and the OCC published a joint notice of proposed rulemaking (59 FR 52100) to make corresponding changes in the definition of the OECD-based group of countries in their risk-based capital guidelines. The FDIC published a similar proposal on February 15, 1995 (60 FR 8582). Under the Agencies' proposals, the OECD-based group of countries would continue to include countries that are full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow, but would exclude any country within this group that had rescheduled its external sovereign debt within the previous five years. The purpose of the proposed modification was to clarify that membership in the OECD-based group of countries must coincide with relatively low transfer risk in order for a country to qualify for the lower risk-weight treatment.

Under the proposals, reschedulings of external sovereign debt generally would include renegotiations of terms arising from a country's inability or unwillingness to meet its external debt service obligations. The proposals further provided that renegotiations of debt in the normal course of business generally would not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment.

The Agencies invited comment on all aspects of the proposal.

II. Comments Received

The OCC and the Board together received two public comments on their proposal. (The FDIC did not receive any comments.) One commenter was a regional banking organization that generally supported the proposal. The other was a clearinghouse that opposed the proposal.

The banking organization agreed that OECD membership alone is not sufficient to ensure that only countries with relatively low transfer risk qualify for lower risk weight treatment, and it supported the additional criterion as providing a good indication of a higher level of transfer risk. The banking organization suggested that the definition should be further revised to exclude newly-formed countries, whose willingness and ability to meet their debt obligations were unproven, for a period of five years. The Agencies did not adopt this suggestion, because the process of admitting countries to the OECD is lengthy enough that the five-year waiting period recommended by the commenter would have little practical effect.

The clearinghouse viewed the current criteria as adequate and commented that adding another criterion would increase the complexity of and confusion about the risk-based capital guidelines. Although the Agencies agree with the commenter on the need to minimize the complexity of the risk-based capital guidelines, the Agencies do not believe that this rule will increase their complexity significantly, particularly since reschedulings by OECD countries tend to be extremely rare. Until a rescheduling occurs, the change in the definition will not have any effect on the assignment of assets to risk-weight categories, and thus will have little or no effect on banks.

III. Final Rule

After carefully considering the comments received and deliberating further on the issues involved, the Agencies are adopting a final rule that amends the definition of the OECD-based group of countries in their risk-based capital guidelines substantially as proposed.

Under the final rule, the OECD-based group of countries continues to include countries that are full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow, but excludes any country within this group that has rescheduled its external sovereign debt within the previous five years.

For purposes of this final rule, an event of rescheduling of external sovereign debt generally would include renegotiations of terms arising from a country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

This distinction between renegotiations arising from a country's inability or unwillingness to meet its external debt service obligations and renegotiations that reflect a change in market conditions was discussed in the preambles of the Agencies' notices of proposed rulemaking but was not included in the regulatory text. In order to clarify the meaning of the final rule, the Agencies are including language to this effect in the text of the final rule.

IV. Regulatory Flexibility Act Analysis

The Agencies hereby certify that this final rule will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The impact on institutions regulated by the Agencies, regardless of their size, will be minimal. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies. Accordingly, no regulatory flexibility analysis is required.

V. Paperwork Reduction Act and Regulatory Burden

The Agencies have determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the Agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. This final rule is effective on April 1, 1996.

VI. OCC Statement on Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action, as that term is defined by Executive Order 12866.

VII. OCC Statement on Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), signed into law on March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons set out in the joint preamble, Appendix A to part 3 of title 12, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1831n note, 1835, 3907, and 3909.

2. In section 1 of appendix A to part 3, footnote 1 in paragraph (c)(19) is redesignated as footnote 1a.

3. In section 1 of appendix A to part 3, paragraph (c)(16) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * * *

(c) * * *

(16) The *OECD-based group of countries* comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow,[1] but excludes any country that has rescheduled its external sovereign debt within the previous five years. These countries are hereinafter referred to as *OECD countries.* A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

Dated: August 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4102a, 4104a, 4104b, 4106, 4128.

2. Appendix A to part 208 is amended by revising footnote 22 in section III.B.1. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

B. * * *

1. * * *[22]* * *

* * * * *

[22]The OECD-based group of countries comprises all full members of the

[1] As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1927(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising footnote 25 in section III.B.1. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

III. * * *

B. * * *

1. * * *[25] * * *

* * * * *

[25]The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

By the order of the Board of Governors of the Federal Reserve System, November 13, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended by revising footnote 12 in section II.B.2. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

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II. * * *

B. * * *

2. * * *[12] * * *

* * * * *

[12]The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C. this 26th day of October, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–30664 Filed 12–19–95; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

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Wednesday
December 20, 1995

Part VII

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 25

Federal Reserve System

12 CFR Part 228

Federal Deposit Insurance Corporation

12 CFR Part 345

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563e

Community Reinvestment Act Regulations; Joint Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 95–07]

RIN 1557–AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 95–203]

RIN 1550–AA93

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS, (collectively, the Federal financial supervisory agencies or agencies) are issuing this final rule to make technical corrections and clarifications to their regulations concerning the Community Reinvestment Act (CRA). Since the publication of the agencies' joint CRA regulations, financial institutions and others have alerted the agencies that two errors exist and that the transition rules are confusing. This final rule is intended to correct the errors and clarify the transition rules.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874–5216; Matthew Roberts, Director, or Margaret Hesse, Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452–3711; or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 942–3090; Robert W. Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3092; or Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3796, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OTS: Timothy R. Burniston, Assistant Director for Compliance Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Compliance Policy, (202) 906–7054; or John Flannery, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7293, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies jointly are amending their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This final rule makes technical corrections and clarifications to the agencies' joint CRA regulations, 12 CFR parts 25, 228, 345, and 563e. Those regulations establish the framework and criteria by which the agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations, and provide that the agencies will take those assessments into account in reviewing certain applications.

Background

The agencies published a joint notice of proposed rulemaking to amend their CRA regulations on December 21, 1993 (58 FR 67466). In response to over 6,700 comments received, the agencies published a second joint notice of proposed rulemaking on October 7, 1994 (59 FR 51232). After considering over 7,200 comments received in response to the second joint proposed rule, the agencies adopted a joint final rule on May 4, 1995 (60 FR 22156) (1995 Rule).

Need for Final Rule

The agencies are amending their recently adopted CRA regulations to correct two technical errors and to clarify the transition rules. Since the publication of the 1995 Rule, a number of financial institutions have expressed confusion about the transition rules.

The agencies find that notice and public procedure concerning this joint final rule are impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. § 553(b)(B). The agencies make this finding because: (1) This joint final rule involves only technical corrections and clarifications to the recently adopted 1995 Rule, which was subject to public notice and comment; (2) some institutions will be subject to the performance tests and standards of the 1995 Rule beginning on January 1, 1996, so it is in the public interest that the joint final rule be effective at that time; and (3) this joint final rule makes no substantive change to the 1995 Rule, rather it makes corrections and eliminates ambiguities associated with the transition requirements.

Furthermore, under 5 U.S.C. § 553(d)(3), the agencies have determined to make this joint final rule effective with less than 30 days prior publication. The agencies find that there is good cause for shortened notice due to the minor nature of the changes, the fact that some institutions will be subject to the performance tests and standards of the 1995 Rule beginning January 1, 1996, and for other reasons previously discussed.

Corrections

The agencies' 1995 Rule contains two errors. First, an internal cross reference is incorrect. The cross reference is found in the discussions about how an institution may amend its strategic plan, found at 12 CFR 25.27(h), 228.27(h), 345.27(h), and 563e.27(h). These identical sections incorrectly state that the amendment process must be done in accordance with the public participation requirements of ''paragraph (c) of this section.'' The correct cross reference is ''paragraph (d) of this section.'' The agencies are amending their respective regulations to reflect the correct cross reference.

Second, an external cross reference is incorrect. In their joint preamble to the final rule, the agencies discussed the definition of ''community development'' contained in the regulations. In the preamble, the agencies stated that ''[t]he section of the definition that discusses activities that promote economic development by financing small business and farms refers to 13 CFR 121.802(a)(2), the size limitations for the Small Business Administration's (SBA's) Small Business Investment

Company and Development Company programs'' (60 FR 22159). The agencies' final regulations do, indeed, reference 13 CFR 121.802(a)(2). However, because of an amendment to the SBA regulation (59 FR 16953) made during the agencies' CRA rulemaking process, this citation refers to only the SBA's Development Company Programs. The correct reference should be 13 CFR 121.802(a)(2) and (3), which include both the Development Company and Small Business Investment Company Programs, as intended. Therefore, the agencies are amending the cross references in 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3), and 563e.12(g)(3). The citations are changed from ''13 CFR 121.802(a)(2)'' to ''13 CFR 121.802(a) (2) and (3).''

Clarification

The agencies are amending their transition rules, found at 12 CFR 25.51, 228.51, 345.51, and 563e.51. The transition rules are correct for purposes of incorporation into and expiration from the Code of Federal Regulations. However, the banks and thrifts that must comply with them have expressed confusion regarding how the rules apply.

The transition rules state the final date of applicability to all institutions with regard to each particular provision of the CRA regulation. However, the transition rules inadequately explain the transition from the former regulation to the new regulation. The agencies are clarifying that when an institution, either mandatorily or voluntarily, becomes subject to the requirements of the performance tests and standards in the 1995 Rule (12 CFR 25.21 through 25.27, 228.21 through 228.27, 345.21 through 345.27, and 563e.21 through 563e.27, as applicable), the institution must comply with all aspects of the 1995 Rule (12 CFR 25.11 through 25.44, 228.11 through 228.44, 345.11 through 345.44, or 563e.11 through 563e.44) applicable to it.

For example, the transition rules state that the agencies will evaluate small institutions under the small institution performance standards described in 12 CFR 25.26, 228.26, 345.26, and 563e.26 on January 1, 1996. However, so that the agencies may evaluate a small institution under the small institution performance standards, the small institution must also comply with other provisions of the regulation that are pertinent. Those provisions would include delineating an assessment area (12 CFR 25.41, 228.41, 345.41, or 563e.41, as applicable), maintaining a public file (12 CFR 25.43, 228.43, 345.43, or 563e.43, as applicable), and providing the proper public notice (12 CFR 25.44, 228.44, 345.44, or 563e.44, as applicable). The transition rules at 12 CFR 25.51(c) (4) and (5), 228.51(c) (4) and (5) 345.51(c) (4) and (5), and 563e.51(c) (4) and (5), however, state that these requirements do not become applicable until January 1 or July 1, 1997. The 1997 dates refer to the last point in time that these requirements become effective for any institution. However, the requirements become effective for small institutions as soon as the small institutions are subject to evaluation under the small institution performance standards.

In some cases, an institution may choose to comply with the performance standards and tests of the May 1995 rule before it must do so. For instance, a large institution may elect to be evaluated under the lending, investment and service tests (12 CFR 25.22 through 25.24, 228.22 through 228.24, 345.22 through 345.24, or 563e.22 through 563e.24, as applicable) before it is required to do so in July of 1997. In this case, the institution must comply with all other provisions of the 1995 Rule.

Similarly, the transition rules state that, for example, the section of the former CRA regulation (12 CFR 25.6, 228.6, 345.6 or 563e.6, as applicable) that addresses public notice requirements does not expire until January 1, 1997. However, the public notice requirements (12 CFR 25.44, 228.44, 345.44 or 563e.44, as applicable) in the 1995 Rule are different from the former requirements. Institutions would find it confusing, if not impossible, to comply completely with both provisions. Therefore, once an institution either voluntarily or mandatorily becomes subject to the performance tests and standards of the 1995 Rule, the provisions of the former CRA regulation (12 CFR 25.3 through 25.7, 228.3 through 25.7, 345.3 through 345.7, or 563e.3 through 563e.7, as applicable) no longer apply to that institution, even though they may continue to apply to other institutions.

Therefore, to clarify these provisions, the agencies are amending 12 CFR 25.51(a), 228.51(a), 345.51(a), and 563e.51(a) by adding at the end of paragraph (a), a sentence explaining that once an institution is either voluntarily or mandatorily subject to the performance tests and standards of the 1995 Rule, the institution must comply with all of the requirements of the 1995 Rule and is no longer subject to the requirements of the former CRA regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board, FDIC, and OTS hereby certify that this joint final rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this joint final rule will not have significant secondary or incidental effects on a substantial number of small entities, or create any additional burden on small entities. The joint final rule merely makes technical corrections to two cross-references and clarifies requirements of the transition rules already adopted by the agencies. These changes will not increase and may, in fact, reduce the burden on institutions because they will make the rules clearer. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995

There are no collection of information requirements in this joint final rule.

Executive Order 12866

OCC and OTS: The OCC and the OTS have determined that this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act), requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this joint final rule amends the agencies' CRA regulations to make two technical corrections and one clarification. Therefore, the OCC and the OTS have determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Federal Reserve System, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 through 2907.

§ 25.12 [Amended]

2. In § 25.12(h)(3), the cross reference ''13 CFR 121.802(a)(2)'' is revised to read ''13 CFR 121.802(a) (2) and (3)''.

§ 25.27 [Amended]

3. In the last sentence of § 25.27(h), the internal cross reference ''paragraph (c) of this section'' is revised to read ''paragraph (d) of this section''.

4. Paragraph (a) of § 25.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 25.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 25.21 through 25.27, the bank must comply with all the pertinent requirements of §§ 25.11 through 25.44, and no longer must comply with the requirements of §§ 25.3 through 25.7.

* * * * *

Dated: December 8, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons discussed in the joint preamble, 12 CFR part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

§ 228.12 [Amended]

2. In § 228.12(h)(3), the cross reference ''13 CFR 121.802(a)(2)'' is revised to read ''13 CFR 121.802(a) (2) and (3)''.

§ 228.27 [Amended]

3. In the last sentence of § 228.27(h), the internal cross reference ''paragraph (c) of this section'' is revised to read ''paragraph (d) of this section''.

4. Paragraph (a) of § 228.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 228.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 228.21 through 228.27, the bank must comply with all the pertinent requirements of §§ 228.11 through 228.44, and no longer must comply with the requirements of §§ 228.3 through 228.7.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 8, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons discussed in the joint preamble, 12 CFR part 345 is amended as follows:

PART 345—[AMENDED]

1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

§ 345.12 [Amended]

2. In § 345.12(h)(3), the cross reference ''13 CFR 121.802(a)(2)'' is revised to read ''13 CFR 121.802(a) (2) and (3)''.

§ 345.27 [Amended]

3. In the last sentence of § 345.27(h), the internal cross reference ''paragraph (c) of this section'' is revised to read ''paragraph (d) of this section''.

4. Paragraph (a) of § 345.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 345.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 345.21 through 345.27, the bank must comply with all the pertinent requirements of §§ 345.11 through 345.44, and no longer must comply with the requirements of §§ 345.3 through 345.7.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated: December 8, 1995.

Jerry L. Langley,

Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

PART 563e—[AMENDED]

1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

§ 563e.12 [Amended]

2. In § 563e.12(g)(3), the cross reference ''13 CFR 121.802(a)(2)'' is revised to read ''13 CFR 121.802(a) (2) and (3)''.

§ 563e.27 [Amended]

3. In the last sentence of § 563e.27(h), the internal cross reference ''paragraph (c) of this section'' is revised to read ''paragraph (d) of this section''.

4. Paragraph (a) of § 563e.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 563e.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a savings association, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 563e.21 through 563e.27, the savings association must comply with all the pertinent requirements of §§ 563e.11 through 563e.44, and no longer must comply with the requirements of §§ 563e.3 through 563e.7.

* * * * *

Dated: December 13, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–30823 Filed 12–19–95; 8:45 am]

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Wednesday
December 20, 1995

Part VIII

Pension Benefit Guaranty Corporation

29 CFR Part 2628

Annual Financial and Actuarial Information Reporting; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2628

RIN 1212–AA78

Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement section 4010 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. Section 4010 requires controlled groups maintaining plans with large amounts of underfunding to submit annually to the PBGC financial and actuarial information as prescribed by the PBGC.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Frank H. McCulloch, Senior Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4116 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On July 6, 1995, the PBGC published in the Federal Register (60 FR 35308) a proposed regulation implementing section 4010 of ERISA. The PBGC received over 20 comments. Section 4010 requires a small number of large controlled groups—those with covered pension plans that (1) have more than $50 million in unfunded vested benefits in the aggregate, (2) have missed contributions in excess of $1 million, or (3) have received funding waivers in excess of $1 million—to file annual financial and actuarial information.

Who Must File—$50 Million Test

In response to comments, the final regulation gives controlled groups the option of using 100% of the 30-year Treasury interest rate and the fair market value of assets (instead of 80% of the 30-year rate and the actuarial value of assets) solely for purposes of calculating the $50 million threshold test. These are the standards that will apply for calculating the variable rate premium under ERISA section 4006 after the Secretary of the Treasury adopts revised mortality tables for post-1999 plan years. Consistent with the post-1999 rules, the PBGC is conditioning use of the option on the use of prescribed mortality tables. For now, controlled groups may continue to use GAM–83 mortality tables. If the PBGC amends the mortality tables under its valuation regulation before the Secretary of the Treasury's revised tables go into effect, the updated mortality tables must be used.

The PBGC did not adopt the suggestion that the PBGC waive reporting if the controlled group's plans meet some prescribed funding percentage or are fully funded on an ongoing basis. The absolute size of the underfunding represents a large exposure to the PBGC and, in many cases, to plan participants.

Who Must File—Missed Contributions and Waivers in Excess of $1 Million

In response to comments, the final regulation provides that missed contributions will not lead to a reporting obligation if they are paid within a ten-day grace period. The final regulation also clarifies that, during the amortization period of a minimum funding waiver, the waiver will be considered to be outstanding (thereby requiring reporting) unless there is a credit balance in the funding standard account that is sufficient to pay the outstanding balance of the waiver and not available to satisfy future minimum funding requirements.

Exempt Entities

In response to comments, the final regulation exempts the controlled group from submitting information for de minimis entities (''exempt entities'') and exempts those entities from all reporting requirements. An entity is de minimis if it does not sponsor a nonexempt plan and its revenue, net assets and annual operating income are five percent or less of the controlled group's revenue, net assets and annual operating income. Alternatively, the net asset test or the annual operating income test is satisfied if an entity's net assets or annual operating income, respectively, is $5 million or less.

Commenters suggested that the PBGC exempt certain foreign members and new members of controlled groups from the regulation's requirements. In most cases, foreign corporations should not present problems for controlled groups. A foreign corporation with U.S. subsidiaries or a domestic corporation with foreign subsidiaries will normally include each foreign entity in its consolidated financial statements. The regulation does not require individual financial information concerning a foreign company covered by consolidated financial statements unless it sponsors a U.S. plan. The PBGC will consider waivers or extensions in the limited cases where foreign companies are not included in consolidated financial statements and are not already exempt under the new de minimis exemption.

Other commenters requested a grace period with respect to entities that become members of a controlled group late in the information year. The de minimis rule will deal with many of these situations. Filers may also request waivers or extensions where information about a filer or a plan is not available by the due date because the filer entered the controlled group late in an information year.

Actuarial Information

The proposed regulation required filers to provide the value of plan benefit liabilities and assets, certain participant data matrices, and an actuarial valuation report containing or supplemented with specified information. The final regulation eliminates the requirement that controlled groups routinely submit the participant data matrices. (The PBGC may request this information.) The regulation permits the enrolled actuary to qualify the actuarial certification in the same manner as is permitted for the Form 5500, Schedule B.

Commenters objected to having to determine the value of benefit liabilities using the PBGC's termination assumptions. The PBGC needs this information to determine the risk of a transaction to participants and to premium payers and to determine whether to terminate a plan. Other liability measures do not reflect plan underfunding on a termination basis; they can seriously understate the PBGC's exposure for plans subject to this regulation. The comments confirmed that the cost of calculating benefit liabilities consists mainly of a one-time cost for adding the PBGC's termination assumptions to existing computer programs. The final regulation simplifies the calculation somewhat by providing for use only of the PBGC's annuity methodology (rather than both its annuity and lump sum methodology).

Exempt Plans

The proposed regulation exempted reporting for plans with fewer than 500 participants and plans with no unfunded benefit liabilities (using the PBGC's termination assumptions), other than plans with funding waivers or missed contributions. The final regulation keeps but simplifies this exemption. Solely for exemption purposes, the controlled group may determine the value of a plan's benefit liabilities using the plan's retirement assumptions (instead of the PBGC's expected retirement age assumptions).

Additional Information

Some commenters questioned the provision under which the PBGC may require filers to submit additional information within ten days. Commenters suggested that the response time be lengthened, that the type of information that may be requested be limited, or that the provision be deleted.

It is the PBGC's ability to get the additional information quickly that allows the PBGC to limit the information that controlled groups must submit on a routine basis. The PBGC will grant extensions of time to respond where a filer demonstrates that it is making a reasonable and good faith effort to respond to the information request.

In response to comments, the final regulation clarifies that this additional information is information that could have been required annually (i.e., information that is necessary to determine a plan's assets and liabilities, or the financial status of a filer, for any period through the end of the information year).

Confidentiality

Some commenters expressed concern about the confidentiality of filer tax information. The regulation does not require the submission of a filer's tax return as part of an annual report; it merely permits the filer to substitute its tax return for the audited or unaudited financial statements required by the statute. Moreover, the statute and regulation provide for confidentiality of information similar to that afforded to Hart-Scott-Rodino antitrust submissions. Filers may request that information they submit not be disclosed to other members of their controlled group.

Information Year

One commenter suggested that the regulation eliminate the concept of an information year and that filers instead be required to use the same reporting year as they use for Form 5500. The information year is a simplifying measuring period that does not require any new reports. For most controlled groups the information year will be the same as the fiscal year on which they prepare their consolidated returns. (The Form 5500 reporting year is based on each plan's plan year, which may not match the plan years of other plans or the fiscal years of controlled group members.)

In response to comments, the final regulation excludes the fiscal years of exempt entities in determining the information year for a controlled group. The final regulation clarifies that the controlled group need not restate consolidated financial statements solely because they include information on entities that are not members of the controlled group or that are exempt entities.

Due Date

Commenters questioned the due date for information—105 days after the close of a filer's information year. This due date is coordinated with the Securities and Exchange Commission's annual reporting date for public companies. In most instances, controlled groups will have prepared audited financial statements prior to that date for public filing and can simply refer to those filings in their submissions to the PBGC. The actuarial information required by that date is similar to pension information required by Financial Accounting Standard 87 that must be included in those financial statements. (The regulation generally allows other actuarial information to be delayed until 15 days after the filing deadline for the Form 5500.)

If the due date presents problems for non-public companies or in other unusual circumstances, filers should request extensions of the deadlines. Filers experiencing problems in preparing or submitting required information should apply for extensions as early as possible, rather than shortly before the due date.

E.O. 12866 and Regulatory Flexibility Act

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866. The provisions of this regulation implement policy decisions made by Congress in requiring filers to provide audited financial statements and other required information annually to the PBGC. The provisions reflect the PBGC's interpretation of the statutory standards and prescribe the form, time, and manner in which the required information should be submitted.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies (for the reasons stated in the proposed rule at 60 FR 35308, 35310, July 6, 1995) that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Paperwork Reduction Act

The collection of information requirements in this regulation have been approved by the Office of Management and Budget under control number 1212–0049. 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.

Responses to this collection of information are mandatory. (See ERISA sections 4002(b)(3) and 4010.) The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. Confidentiality of information submitted is provided for in § 2628.12 of the regulation. (See ERISA section 4010(c).)

The PBGC estimates that the average annual burden for this collection of information will be 13.2 hours and $24,315 for each of approximately 100 controlled groups. Comments concerning the accuracy of this burden estimate and any suggestions for reducing the burden of this collection of information should be submitted to the PBGC's Office of General Counsel, 1200 K Street, NW, Suite 340, Washington, DC 20005–4026.

List of Subjects in 29 CFR Part 2628

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending subchapter C, chapter XXVI of 29 CFR by adding a new part 2628 to read as follows:

PART 2628—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.

2628.1 Purpose and scope.
2628.2 Definitions.
2628.3 Filing requirement.
2628.4 Filers.
2628.5 Information year.
2628.6 Information to be filed.
2628.7 Identifying information.
2628.8 Plan actuarial information.
2628.9 Financial information.
2628.10 Due date and filing with the PBGC.
2628.11 Waivers and extensions.
2628.12 Confidentiality of information submitted.
2628.13 Penalties.
2628.14 OMB control number.

Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310

§ 2628.1 Purpose and scope.

(a) *Purpose.* This part prescribes the requirements for annual filings with the PBGC under section 4010 of the Act.

(b) *Scope.* This part applies to filers for any information year ending on or after December 31, 1995.

§ 2628.2 Definitions.

For purposes of this part—

(a) *Act* means the Employee Retirement Income Security Act of 1974, as amended.

(b) *Code* means the Internal Revenue Code of 1986, as amended.

(c) *Contributing sponsor* means a person who is a contributing sponsor as defined in section 4001(a)(13) of the Act.

(d) *Controlled group* means, with respect to any person, a group consisting of that person and all other persons under common control with that person, determined under part 2612 of this chapter.

(e) *Exempt entity* means a person who does not have to file information and about whom information does not have to be filed, as described in § 2628.4(d) of this part.

(f) *Exempt plan* means a plan about which actuarial information does not have to be filed, as described in § 2628.8(c) of this part.

(g) *Fair market value of the plan's assets* means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

(h) *Filer* means a person who is required to file reports, as described in § 2628.4 of this part.

(i) *Fiscal year* means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

(j) *Information year* means the year determined under § 2628.5 of this part.

(k) *Person* means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization representing any group of participants for purposes of collective bargaining.

(l) *Plan* means a single-employer plan, as defined in section 4001(a)(15) of the Act, to which Title IV of the Act applies.

(m) *Plan year* means the calendar, policy, or fiscal year on which the records of a plan are kept.

§ 2628.3 Filing requirement.

(a) *In general.* Except as provided in § 2628.8(c) (relating to exempt plans) and except where waivers have been granted under § 2628.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 2628.10, all information specified in § 2628.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 2628.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

§ 2628.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) the aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed $50 million (disregarding those plans with no unfunded vested benefits);

(2) any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of the Act or section 412(n)(1) (A) and (B) of the Code have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of the Act or section 412(d) of the Code totaling in excess of $1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.*

(1) *General.* Except as provided in paragraph (b)(2) of this section, for purposes of the $50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of the Act and § 2610.23 of this chapter (without reference to the exemptions and special rules under § 2610.24).

(2) *Optional assumptions.* Prior to the first information year in which the mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of the Act apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 2610.23(c) of this chapter) all of the following assumptions:

(i) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) the fair market value of the plan's assets; and

(iii) the mortality tables described in section 302(d)(7)(C)(ii)(I) of the Act or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment to the mortality tables used to value benefits to be paid as annuities in trusteed plans under part 2619 of this chapter, those amended mortality tables.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) a credit balance exists in the funding standard account (described in section 302(b) of the Act and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) a waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) no portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of the Act or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) is not a contributing sponsor of a plan (other than an exempt plan);

(2) has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's annual operating income for the

fiscal year(s) ending within the information year, or

(ii) $5 million; and

(4) has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) $5 million.

§ 2628.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 2628.4), what information a filer must submit (§§ 2628.6–2628.9), whether a plan is an exempt plan (§ 2628.8(c)), and the due date for submitting the information (§ 2628.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years.*

(1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 1996, and filer B's financial information with respect to its fiscal year ending September 30, 1996, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

§ 2628.6 Information to be filed.

(a) *General.* A filer must submit the information specified in § 2628.7 (identifying information), § 2628.8 (plan actuarial information) and § 2628.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year. The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

§ 2628.7 Identifying information.

(a) *Filers.* Each filer is required to provide the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) the name, address, and telephone number of each member of the controlled group and the legal relationships of each (for example, parent, subsidiary); and

(2) the nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to each member (or if there is no EIN for a member, an explanation).

(b) *Plans.* Each filer is required to provide the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) the name of each plan;

(2) the EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each plan (or if there is no EIN or PN for a plan, an explanation); and

(3) if the EIN or PN of a plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation.

§ 2628.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide the following actuarial information—

(1) the fair market value of the plan's assets;

(2) the value of the plan's benefit liabilities (determined in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(3) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of the Act or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of the Act or section 412(b)(3)(A) of the Code),

(ii) the itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) the minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) the actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of the Act or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change), and

(v) a summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors; and

(4) a written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR § 301.6059–1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(3) of this section is not available by the date specified in § 2628.10(a), a filer may satisfy the requirement to provide such information by—

(1) including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 2628.10(b) of this part, and

(2) filing such information (along with a certification by an enrolled actuary under paragraph (a)(4) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has

benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of the Act or section 412 of the Code; and

(2) has no minimum funding waivers outstanding (as described in § 2628.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Determination of benefit liabilities.* The value of a plan's benefit liabilities (within the meaning of section 4001(a)(16) of the Act) at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data.*

(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trusteed plans terminating at the end of the plan year (as prescribed in part 2619, subpart C, of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of the Act or section 412(l) of the Code.

§ 2628.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide the following financial information for each controlled group member (other than an exempt entity)—

(1) audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) if audited financial statements are not available by the date specified in § 2628.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) if neither audited nor unaudited financial statements are available by the date specified in § 2628.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) the audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 2628.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) for each controlled group member included in the consolidated financial statements that is a contributing sponsor of a plan (other than an exempt plan), the contributing sponsor's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (*e.g.,* joint ventures) or are exempt entities.

§ 2628.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 2628.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 2628.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) the postmark was made by the United States Postal Service; and

(ii) the document was mailed postage prepaid, properly addressed to the PBGC; or

(2) if the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be

included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 2628.11 Waivers and Extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 2628.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 2628.10(c) no later than 15 days before the applicable date specified in § 2628.10 of this part, and must state the facts and circumstances on which the request is based.

§ 2628.12 Confidentiality of information submitted.

In accordance with § 2603.15(b) of this chapter and section 4010(c) of the Act, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 2628.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of the Act against the filer and each member of the filer's controlled group (other than an exempt entity) of up to $1,000 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

§ 2628.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB Control Number 1212–0049.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Issued in Washington, DC, this 18th day of December 1995.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 95–31053 Filed 12–19–95; 8:45 am]

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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. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2204/P.L. 104–64

Defense Production Act Amendments of 1995 (Dec. 18, 1995; 109 Stat. 689)

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