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Wednesday
January 3, 1996

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: January 9, 1996 at 9:00 am and January 23, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

Agricultural Marketing Service
RULES
Papayas grown in Hawaii, 99–100
Peanuts domestically produced, 102–104
Raisins produced from grapes grown in California, 100–102
NOTICES
Agency information collection activities:
Proposed collection; comment request, 159–160

Agriculture Department
See Agricultural Marketing Service
See Food and Consumer Service
See Foreign Agricultural Service
See Rural Utilities Service
NOTICES
Import quotas and fees:
Upland cotton, 156–157
Privacy Act:
Computer matching programs, 158–159

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Savannah River et al., GA; safety/security zones, 136–139

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 230

Customs Service
NOTICES
Imported glassware; tariff classification and guidelines, 223–229

Defense Department
RULES
Acquisition regulations:
Uruguay Round (1996 agreement); implementation, 130
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Employee stock ownership plans; comment period extension, 234

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission

Energy Research Office
NOTICES
Meetings:
Basic Energy Sciences Advisory Committee, 162

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Clean-fuel vehicles and engines emission standards, conversion requirements, and California pilot text program; small-volume manufacturers certification program conversion sales volume limit provision removed, 129–130
Deterioration factors for alternative fuel vehicles, determination requirements; inherently low-emission vehicles; labeling requirements amendments, 122–128
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Small-volume manufacturers certification of clean-fuel and conventional vehicle conversions; sales volume limit provisions, 140–145
NOTICES
Confidential business information and data transfer, 162–163

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 116–120
Airworthiness standards:
Special conditions—
Hamilton Standard model 568F propeller, 114–115
Class E airspace, 120–121, 121–122
Class E airspace; correction, 232
PROPOSED RULES
Airworthiness directives:
British Aerospace, 131–133
Dornier, 133–134
McDonnell Douglas, 134–136
NOTICES
Organization, functions, and authority delegations:
Bloomington, IN, 223
Muncie, IN, 223
South Lake Tahoe, CA, 223

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
EcoElectrica, L.P.; correction, 232
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp. et al., 161
NorAm Gas Transmission Co., 161–162

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 230

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 163–166
Meetings; Sunshine Act, 230–231
Applications, hearings, determinations, etc.:
Fidelity Co. et al., 166

J.G.D.B. y Cia. S. en C. et al., 166–167
Johnson, Arthur C., et al., 166
Middlefork Financial Group et al.; correction, 167
National City Corp., 167–168
Ohio Valley Banc Corp et al., 168
Royal Bank of Canada, 168

Federal Trade Commission
NOTICES
Prohibited trade practices:
Mama Tish's Italian Specialities, Inc., 168–170

Food and Consumer Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 160–161

Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Office of Communication, Training, and Manufacturers Assistance, Center for Biologics Evaluation and Research, et al., 170–171

Foreign Agricultural Service
NOTICES
Meetings:
Food and Agriculture Organization Committee on World Food Security, 161

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Employee stock ownership plans; comment period extension, 234

Health and Human Services Department
See Food and Drug Administration

Interior Department
See Reclamation Bureau

Library of Congress
NOTICES
Television and Video Preservation in U.S.; hearing; study, 171–173

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Employee stock ownership plans; comment period extension, 234

National Credit Union Administration
RULES
Credit unions:
Truth in savings; reporting and recordkeeping requirements, 114

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards:
Light trucks—
1998 model year, 145–155

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Light water reactor pressure vessels; fracture toughness requirements; correction, 232
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 173–174
Meetings; Sunshine Act, 231
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 174–192
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 192–193
Minnick, Gary A., 193–195

Presidential Advisory Committee on Gulf War Veterans' Illnesses
NOTICES
Meetings, 195

Presidential Documents
EXECUTIVE ORDERS
Government employees:
Pay and allowances; rates (EO 12984), 237–245

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Boise Project, ID; Cascade Reservoir Resource management plan, 171

Rural Utilities Service
RULES
Electric loans:
RUS borrowers; audit policy and certified public accountant requirements, 104–114

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 196–199
Chicago Board Options Exchange, Inc., 199–202
Municipal Securities Rulemaking Board, 203–204
National Association of Securities Dealers, Inc., 204–208
Participants Trust Co., 208–209
Philadelphia Stock Exchange, Inc., 209–213

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 213–214
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 214
Transportation Marketplace Conference and Seminars; proposal request, 214–223

Treasury Department
See Customs Service

Separate Parts In This Issue

Part II
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 234

Part III
The President, 237–245

Reader Aids

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

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.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
12944 (Superseded by EO 12984).....235
12984.....235

7 CFR
928.....99
989.....100
997.....102
1773.....104

10 CFR
50.....233

12 CFR
707.....114

14 CFR
35.....114
39.....116
71 (3 documents) 120, 121, 232

Proposed Rules:
39 (3 documents) 131, 133, 134

33 CFR
Proposed Rules:
165.....136

40 CFR
86.....122
88 (2 documents) 122, 129

Proposed Rules:
85.....140
86.....140
88.....140

48 CFR
225.....130
252.....130

Proposed Rules:
31.....234

49 CFR
Proposed Rules:
533.....145

Proposed Rules

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–164–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. This action would reduce the inspection threshold and repetitive inspection interval, and would identify specific structural members to be inspected. This action also would require eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. This proposal is prompted by reports of additional cracking found in the structural members in the flight deck canopy area of the affected airplanes. The actions specified by the proposed AD are intended to ensure that cracking in the flight deck canopy area is detected and corrected in a timely manner; such cracking could result in reduced structural integrity of the cockpit frame and the adjacent fuselage structure.

DATES: Comments must be received by February 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 94–NM–164–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 7, 1991, the FAA issued AD 91–02–12, amendment 39–6861 (56 FR 1569, January 16, 1991), which is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes. That AD requires repetitive visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. That action was prompted by several reports of cracks in various structural members in the flight deck canopy area. The requirements of that AD are intended to prevent reduced structural integrity of the fuselage.

Since the issuance of that AD, additional reports have been received indicating that cracking was found in the structural members in the flight deck canopy area on Model BAC 1–11 series airplanes. In a number of these cases, complete failure of the top sill joint strap, doubler, and angle has occurred. Cracking also has been found in the fuselage frame at station 160.5 (left-hand only). This cracking was found on airplanes that had accumulated between 28,000 and 78,000 total landings. The cause of the cracking has been attributed primarily to fatigue. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the cockpit frame and the adjacent fuselage structure.

British Aerospace has issued Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993, which describes procedures for the following:

1. Repetitive detailed visual inspections to detect cracks of the top sill joint strap at station 82.5;
2. Repetitive detailed visual inspections to detect cracks of the frame at station 113 in the flight deck canopy area;
3. Repetitive non-destructive testing (NDT) inspections using eddy current techniques to detect cracks of the top sill joint strap, angle, and doubler at station 82.5;
4. Repetitive detailed visual inspections to detect cracks of the frame at station 160.5 (left-hand only) between stringers 13 and 15; and
5. Replacement of any cracked part with a new part, or repair in accordance with the Structural Repair Manual.

This alert service bulletin recommends a reduced inspection threshold from that specified in earlier issues of the alert service bulletin, since inspection results have indicated that cracks can occur before the previous threshold had been reached. In addition, the alert service bulletin recommends reduced intervals (specified in numbers of landings) for accomplishment of the repetitive inspections, and also includes flight hour limits for those intervals since resonance in the canopy area may have contributed to the cracking.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–02–12 to continue to require repetitive visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. However, it would reduce the inspection threshold and repetitive inspection interval, and would identify specific structural members to be inspected. This proposed AD also would require repetitive eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. Certain repairs would be required to be accomplished in accordance with the Structural Repair Manual or in accordance with a method approved by the FAA. Other actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 31 Model BAC 1–11–200 and –400 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 91–02–12 take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $33,480, or $1,080 per airplane.

The new actions that are proposed in this AD action would take approximately 19 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $35,340, or $1,140 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6861 (56 FR 1569, January 16, 1991), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 94–NM–164–AD.

Supersedes AD 91–02–12, Amendment 39–6861.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 reduced structural integrity of the cockpit frame and the adjacent fuselage structure, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 6 months after February 25, 1991 (the effective date of AD 91–02–12, amendment 39–6861), whichever occurs later; and thereafter at intervals not to exceed 5,000 landings: Perform a visual inspection to detect cracks of the flight deck canopy area, in accordance with British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 2, dated June 5, 1990; or Issue 3, dated April 8, 1993. Pay particular attention to the top sill joint strap, the top sill intercostal, the frame at Station 113, and the top sill boom and web. Repeat this inspection until the inspections required by paragraph (c) of this AD are accomplished. After the effective date of this AD, the inspection shall be accomplished only in accordance with Issue 3 of the alert service bulletin.

(b) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Following accomplishment of the repair, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 5,000 landings until the inspections required by paragraph (c) of this AD are accomplished.

(c) Perform a detailed visual inspection to detect cracks of the top sill joint strap at station 82.5, of the frame at station 113, and of the frame at station 160.5 (left-hand side only) between stringers 13 and 15; and an eddy current inspection to detect cracks of the top sill members at station 82.5. Perform these inspections in accordance with British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993, at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD.

(1) For airplanes operating at a maximum cabin differential pressure not exceeding 7.5 pounds per square inch (psi): Perform the inspections at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 5,000 landings or 7,500 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 20,000 total landings since date of entry into service; or

(ii) Within 1,200 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes operating at a maximum cabin differential pressure greater than 7.5 psi, but not exceeding 8.2 psi, including those airplanes having incorporated British Aerospace Airbus Limited Modification PM3187: Perform the inspections at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 3,500 landings or 5,250 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 14,000 total landings since date of entry into service; or

(ii) Within 800 landings or 12 months after the effective date of this AD, whichever occurs later.

Note 2: British Aerospace Airbus Limited Modification PM3187 increases the cabin differential pressure from the normal 7.5 psi to 8.2 psi. If Modification PM3187 has been incorporated on the airplane, that airplane is considered to be subject to the requirements of paragraph (c)(2) of this AD.

(d) If any crack is found during any inspection required by paragraph (c) of this AD, prior to further flight, accomplish the requirements of paragraph (d)(1), (d)(2), or (d)(3), as applicable.

(1) For cracking of the joint strap, doubler, or angle at the sill joint at station 82.5: Replace the cracked part with a new part in accordance with British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993.

(2) For cracking of the frame at station 113: Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) For cracking of the frame at station 160.5: Repair in accordance with the Structural Repair Manual, as specified in British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on December 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–45 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–136–AD]

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require installation of a reinforcement doubler on the rudder skin. This proposal is prompted by the results of a design review of this airplane model that revealed inadequate structural strength of the attachment fitting of the rudder damper and of the adjacent structure. The actions specified by the proposed AD are intended to prevent failure of the attachment structure of the rudder damper in the event of aerodynamic gust loads, as the result of inadequate structural strength of the subject structure.

DATES: Comments must be received by February 13, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–136–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that the results of the manufacturer's design review of this airplane model have revealed that the structural strength of the attachment fitting of the rudder damper and of the adjacent structure is inadequate to withstand the ground gust specifications required by Federal Aviation Regulations (FAR) part 25 (14 CFR 25). This condition, if not corrected, could result in failure of the attachment structure of the rudder damper in the event of aerodynamic gust loads, which could contribute to reduced controllability of the airplane.

Dornier has issued Service Bulletin SB–328–27–063, Revision 1, dated January 26, 1995, which describes procedures for installation of a reinforcement doubler on the rudder skin. The reinforcement doubler will improve the structural integrity of the attachment fitting of the rudder damper and of the adjacent structure. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 94–352 in order to assure the continued airworthiness of these airplanes in Germany.

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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, the proposed AD would require installation of a reinforcement doubler on the rudder skin. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $120 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier: Docket 95–NM–136–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3024 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) 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 failure of the attachment structure of the rudder damper in the event of aerodynamic gust loads, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a reinforcement doubler on the rudder skin in accordance with Dornier Service Bulletin SB–328–27–063, Revision 1, dated January 26, 1995.

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

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

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

Issued in Renton, Washington, on December 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–43 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–177–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes. This proposal would require modification of the AC generator control units. This proposal is prompted by reports of loss of electrical power from two generators and an engine that flamed out due to an overfrequency condition of a generator. The actions specified by the proposed AD are intended to prevent an overfrequency condition of a generator, which could lead to the loss of all electrical power of the airplane.

DATES: Comments must be received by February 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5343; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–177–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of loss of electrical power from two generators and an engine that flamed out on Model DC–10 series airplanes, which resulted in multiple malfunctions of the electrical system. Investigation revealed that the cause of the loss of electrical power was attributed to an overfrequency condition in one of the three generators, which resulted from certain failure modes of the constant speed drive (CSD). Since all three generators are in parallel, the overfrequency condition of one generator increased the speed of the other two generators, which led to failure of the generator fans. If the generator fans fail, all electrical power from the generators could be lost; this situation could lead to loss of all electrical power of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 1995, which describes procedures for modification of the AC generator control units (GCU). This modification adds a circuit that will provide overfrequency protection. The circuit will isolate an overspeeding generator before there is a perceptible power interruption on the other buses.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the AC GCU's. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 419 Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 276 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,896 per generator control unit; there are 4 units per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,279,984, or $11,884 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95–NM–177–AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) 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 an overfrequency condition of the generator, which could result in loss of all electrical power of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify the AC generator control units (GCU) in accordance with McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 1995.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on December 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–44 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 165

[CGD07–95–062]

RIN 2115–AA97

Safety/Security Zone Regulations; Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish five safety/security zones and two safety zones to protect life, property, and the environment in the Savannah River and Wassaw Sound in preparation for, and during the 1996 Olympic Sailing Competition.

The anticipated concentration of spectator and participant vessels associated with these races pose safety and security concerns for the well-being of the Olympic participants and spectators. The proposed regulations are intended to provide security for the Olympic participants and to promote safe navigation on the waters in the vicinity of the Olympic activities, as detailed in the following text, by controlling the traffic entering, exiting and traveling within these waters, and are necessary to minimize the problems associated with crowded conditions in the area during the Olympic event.

DATES: Comments must be received on or before March 4, 1996.

ADDRESSES: Comments may be mailed to the Captain of the Port Savannah, P.O. Box 8191, Marine Safety Office, Savannah, Georgia, 31412–8191. The comments will be available for inspection and copying at 222 W. Oglethorpe Avenue, Suite 402, Savannah, Georgia between 9 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand delivered to this address. A copy of the draft environmental assessment is available from CEU Miami, 909 S.E. 1st Ave., Miami, Florida 33131. The draft environmental assessment is available for inspection and copying at Coast Guard Marine Safety Office Savannah, 222 W. Oglethorpe Avenue, Suite 402, Savannah, Georgia between 9 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT J. A. Simmerman, Marine Safety Office, Savannah at (912) 652–4353, between the hours of 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–95–062) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Drafting Information

The drafters of this document are LT J.A. Simmerman, Project Officer for the Captain of the Port, Savannah, Georgia, and LTJG J. Diaz, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Approximately 1,000 to 5,000 spectator vessels are expected to arrive and participate in the festivities of the 1996 Olympic sailing competition. The anticipated concentration of spectator and participant vessels associated with these races poses safety and security concerns for the well-being of the Olympic participants and spectators, which is addressed in these proposed regulations.

The Coast Guard proposes to establish five safety/security zones and two safety zones to provide for the safety and security of the Olympic participants and spectators. These regulations are intended to promote safe navigation on the waters in the vicinity of Olympic activities, as detailed in the following text, by controlling the traffic entering,

exiting and traveling within these waters.

There will be Coast Guard and State Law Enforcement patrol vessels on scene to enforce the zones and monitor traffic. No persons or vessels will be allowed to enter or operate within these zones, except as may be authorized by the Captain of the Port. These regulations would be issued pursuant to 33 U.S.C. 1231, 50 U.S.C. 191, as set out in the authority citation of all of Part 165. The effective dates of these regulations would be from July 2, 1996 until August 5, 1996.

Five safety/security zones would be established in the following areas: (1) Savannah River (Olympic Village area), all the waters around the Marriott Hotel Olympic Village; (2) Wilmington River and Turners Creek area (Olympic Marina area); (3) Wilmington River and Wassaw Sound, moving safety/security zones placed 75 yards around all Olympic Athlete shuttle vessels, with athletes onboard, while transiting in the Wilmington River and Wassaw Sound area; (4) Bull River and/or Tybee Cut; the entrance and exit of Tybee Cut will be closed during foul/heavy weather to allow for athlete shuttles to transit the area; (5) and the Atlantic Ocean and Wassaw Sound offshore racing areas, which includes the area from Myrtle Island until the Wilmington River and the area from Wilmington Island until the junction of the Half Moon and Bull Rivers.

The proposed regulations for the offshore racing areas (as defined in proposed new section 165.T07–062(a)(5)) will be enforced for that portion of the race venue which is located within the navigable waters of the United States to minimize navigational dangers and to ensure the safety of vessels in the area of the Olympic venue. Non-obligatory guidelines are included for that portion of the venue which falls outside the navigable waters of the United States. Entry into this safety/security zone will be prohibited without permission of the Captain of the Port.

The Coast Guard also proposes to establish a moving safety zone for the vessel which will carry the Olympic torch to the Savannah waterfront, prior to the commencement of the 1996 Olympic Games. The zone will commence in the Savannah River in the vicinity of Coast Guard Station Tybee and continue west up river to the Highway 17 bridge. The safety zone is needed for the protection of the vessel carrying the Olympic torch. The zone will restrict vessel operations in the safety zone.

Finally, the Coast Guard proposes to establish a safety zone for a fireworks display in connection with Olympic festivities, on the Savannah River in the vicinity of Rousakis Plaza. The safety zone is needed to protect vessels, facilities, and personnel from safety hazards associated with the storage, preparation, and launching of fireworks. The zone will restrict vessel operations in the safety zone.

All safety/security and safety zones will contain protective and mitigating measures to minimize potential impacts on Protected and/or Endangered Species: Florida Manatee, Sea Turtles and Bottlenose Dolphin.

All vessels which fail to comply with these regulations while operating within the regulated areas during the regulatory periods are subject to the penalties in 33 U.S.C. 1232.

Federalism

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

Environmental Assessment

This proposal has been included in the draft environmental assessment prepared to cover all of the Olympic activities. A preliminary finding of no significant environmental impact has been made based on the draft environmental assessment. A copy of the draft environmental assessment is available where stated in the **ADDRESSES** section.

Regulatory Evaluation

These proposed regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic 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.

Proposed Regulations

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 165—[AMENDED]

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

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

2. A new § 165.T07–062 is added to read as follows:

§ 165.T07–062 Safety/security zones: Savannah River, Wilmington River and Turners Creek, Bull River, and Wassaw Sound, GA.

(a) *Safety/security zones.* The following areas are safety/security zones:

(1) *Marriott Hotel/Olympic Village.* In the vicinity of the Marriott Hotel, in position 32°04′45″ N, 081°05′52″ W, with the following boundaries:

West Boundaries
32°04′56″ N, 081°05′05″ W; to
32°04′50″ N, 081°05′08″ W

East Boundaries
32°04′50″ N, 081°04′33″ W; to
32°04′40″ N, 081°04′34″ W

This zone includes all waters within the above noted area in the Savannah River from the shore to shore. This zone will be extended 500 yards to the west, and 500 yards to the east, from the Marriott Hotel for opening and closing ceremonies and for award ceremonies.

Datum: NAD 83

(2) *Olympic Marina; Wilmington River and Turners Creek.* The safety/security zone begins in the Wilmington River at position:

32°00′45″ N, 081°00′24″ W; then south to 31°59′53″ N, 081°00′11″ W; then northeast to 31°00′29″ N, 080°59′17″ W

The zone extends approximately 300 yards towards the center of the Wilmington River from it's eastern bank. Included is a portion of Turners Creek extending east from its entrance at the Wilmington River.

Datum: NAD 83

(3) *Wilmington River and Wassaw Sound.* A moving safety/security zone will be established in all waters within a 75 yard radius around all Olympic

Athlete shuttle vessels transporting Olympic athletes, and transiting to and from the Olympic Marine (Sheraton Hotel) and the Day Marina (Beach Hammock) via either Tybee Cut or the Wilmington River.

Datum: NAD 83

(4)(i) *Bull River.* This safety/security zone closes the Southern entrance to the Bull River at:

31°57′24″ N, 080°56′41″ W; east to 31°57′24″ N, 080°55′53″ W

(ii) *Bull River (Adverse weather alternative).* This safety/security zone closes Tybee Cut:

31°57′53″ N, 080°56′29″ W; southwest to 31°57′05″ N, 080°59′06″ W

This zone includes all of Tybee Cut within the closed area.

Datum: NAD 83

(5) *Atlantic Ocean and Wassaw Sound.* (i) The following area is a safety/security zone: From Olympic Security Zone Daybeacon ''BR'' in position:

31°57′32″ N, 080°56′31″ W; east to Olympic Security Zone Daybeacon ''A'' in position:

31°58′00″ N, 080°50′48″ W; southeast to Olympic Security Zone Daybeacon ''AA'' in position:

31°57′45″ N, 080°50′08″ W; southeast to Olympic Security Zone Light ''B'' in approximate position:

31°57′27″ N, 080°49′21″ W; south to Olympic Security Zone Lighted Buoy ''C'' in approximate position:

31°56′21″ N, 080°48′48″ W; southwest to Olympic Security Zone Lighted Buoy ''CC'' in approximate position:

31°55′34″ N, 080°49′11″ W; southwest to Olympic Security Zone Lighted Buoy ''D'' in approximate position:

31°54′45″ N, 080°49′34″ W; southwest to Olympic Security Zone Lighted Buoy ''DD'' in approximate position:

31°53′58″ N, 080°49′55″ W; southwest to Olympic Security Zone Lighted Buoy ''E'' in approximate position:

31°53′09″ N, 080°50′19″ W; west to Olympic Security Zone Lighted Buoy ''F'' in approximate position:

31°52′45″ N, 080°52′00″ W; northwest to Olympic Security Zone Daybeacon ''G'' in position:

31°53′06″ N, 080°52′30″ W; northwest to Olympic Security Zone Light ''H'' in approximate position:

31°53′36″ N, 080°53′15″ W; northwest to Olympic Security Zone Lighted Buoy ''I'' in approximate position:

31°54′32″ N, 080°54′27″ W; northwest to Olympic Security Zone Lighted Buoy ''J'' in approximate position:

31°54′48″ N, 080°54′55″ W; west to Olympic Security Zone Lighted Buoy ''K'' in approximate position:

31°55′02″ N, 080°56′20″ W; then a curved line following the outer edge of Race Course Circle A to Cabbage Patch Island Daybeacon ''20'' in position:

31°56′11″ N, 080°58′14″ W

(ii) In Wassaw Sound from the southern tip of Wilmington Island at the junction of the Half Moon and Bull Rivers at position:

31°57′56″ N, 080°56′25″ W; southeast to 31°57′33″ N, 080°55′55″ W

Datum: NAD 83

(b) *Definitions—Captain of the Port* means the Captain of the Port designated by the Commander, Seventh Coast Guard District. The Captain of the Port has the authority to control the movement of all vessels operating in the regulated areas and may suspend the races at any time it is deemed necessary for the protection of life and property.

Note: The Captain of the Port may be contacted during the regulatory periods on VHF/FM Channel 16 (156.8 MHZ) or Channel 22 (157.1 MHZ) by calling ''Coast Guard Captain of the Port'' or ''Coast Guard Marine Safety Office Savannah''.

Competition Vessels means any vessel approved and designated by Atlanta Committee for the Olympic Games (ACOG) for participation in sanctioned racing.

Official Vessels means all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement vessels, and civilian vessels designated by the Coast Guard Captain of the Port.

Participant means any competition vessel or vessel directly supporting competition that is registered with ACOG while in performance of its official function relative to a given race.

Unaffiliated vessels means all vessels that are not registered with ACOG or designated as an Official Vessel by the Coast Guard Captain of the Port are unaffiliated vessels.

(c) *Effective dates.*

(1) *Marriott Hotel/Olympic Village.* The safety/security zone will become effective at 8 a.m. EDT July 2, 1996, and terminates at 12:30 p.m. EDT August 5, 1996.

(2) *Olympic Marina; Wilmington River and Turners Creek.* This safety/security zone becomes effective at 8 a.m. EDT July 2, 1996, and terminates at 12:30 p.m. EDT August 5, 1996.

(3) *Wilmington River and Wassaw Sound.* These safety/security zones will become effective at 8 a.m. EDT July 2, 1996, and terminates at 7:30 p.m. EDT August 2, 1996.

(4) *Bull River.* This safety/security zone will be effective between 9 a.m. and 7 p.m. EDT daily from July 2, 1996 through August 2, 1996.

(5) *Atlantic Ocean and Wassaw Sound.* The following regulations are in effect between the hours of 10 a.m. and 7 p.m. commencing July 19, 1996 to August 2, 1996, each race date on those waters within the Olympic offshore race venue which fall within the navigable waters of the United States, i.e., those waters within three nautical miles of the baseline from which the territorial sea is measured. This section will not be in effect on those race dates when the races are postponed or canceled. Announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Unaffiliated vessels shall remain outside the course perimeter, as marked by the ACOG vessels and Official Vessels.

(ii) All vessels shall follow the instructions of any Coast Guard, Coast Guard Auxiliary or state law enforcement vessels.

Note: The regulations specified in paragraph (5) apply only within the navigable waters of the United States. In all waters within the Olympic Offshore race venue which fall outside the navigable waters of the United States, during the specified dates and times, the following non-obligatory guidelines apply:

(A) All unaffiliated vessels should remain clear of the race venue and avoid interfering with any participant, ACOG or Official Vessel. Interference with race activities may constitute a safety hazard warranting cancellation or termination of all or part of the race activities by the Captain of the Port.

(B) Any unauthorized entry within the race course perimeter, as marked by ACOG and Official Vessels, by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(d) *Environmental Protection Measures.* In all waters within these safety/security zones, mariners shall take the protective and mitigating action described to below to minimize potential impacts on the listed endangered and/or protected species. In addition, detailed conditions will be included in the Coast Guard Permit authorizing the 1996 Olympic Yachting Events.

(1) *The Florida Manatee* or Sea Cow is a Federally Endangered species occurring in Georgia and South Carolina waters in the summer months.

(i) Mariners shall watch for manatees and use slow speeds in shallow waters.

(ii) Mariners shall observe all manatee speed zones and caution areas.

(iii) If mariners see or their vessel hits a manatee, mariners shall immediately

notify Olympic officials and call the Georgia Department of Natural Resources (from 8 a.m. to 4:30 p.m., call 1–800–272–8363; after hours, call 1–800–241–4113), or the South Carolina Department of Natural Resources (1–800–922–5431). Reports regarding manatee sightings shall include: time of sighting, location, date, number of individual manatee, and a description of manatee activity.

(2) *Sea Turtles* such as Loggerhead sea turtle (Caretta caretta), Green sea turtle (Chelonia mydas), Leatherback sea turtle (Dermochelys coriacea), Hawksbill sea turtle (Eretmochelys imbricate) and Kemp's Ridley sea turtle (Lepidochelys kempi) are federally endangered species and occur in the vicinity during the period of the Olympic events. If a Sea Turtle is sighted in or within 100 yards of the Atlantic Ocean and Wassaw Sound offshore racing areas, mariners must take whatever steps are necessary to avoid collision with the turtles, including stopping the race immediately if a sea turtle strays onto or dangerously near the course.

(3) *Bottlenose Dolphin* (porpoise) are protected under the Marine Mammal Protection Act of 1972. These mammals shall be observed only at a distance. They must not be fed or harmed in any way.

(e) *Regulations.* In accordance with the general regulations in Section 165.33 of this part, entry into the zone is subject to the following requirements:

(1) Entry into these safety/security zones is prohibited unless authorized by the Caption of the Port or his representative.

(2) The representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf regardless of the support platform.

(3) Vessel operators desiring to enter or operate within the safety/security zones shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zones shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety/security zones may be contacted on VHF–FM channels 16 or 81, or vessel operators may determine the restrictions in effect for the safety/security zones by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety/security zones and restrictions imposed.

3. A new § 165.T07–077 is added to read as follows:

§ 165.T07–077 Safety Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a moving safety zone: All waters within a 200 yards radius around the vessel that will carry the Olympic torch to the Savannah waterfront. The zone will commence on the Savannah River approximate position of 32° 02′.10 N, 80° 54′.16 W in the vicinity of Coast Guard Station Tybee and ending at an approximate position 32°05′.13 N, 81°05′.47 West at the Highway 17 bridge.

(b) *Effective dates.* This section is effective at 8 a.m. EDT and expires at 9 p.m. EDT on July 10, 1996, unless sooner terminated by the Captain of the Port, Savannah, GA.

(c) *Regulations.*

In accordance with the general regulations in Section 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his representative.

(2) The representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf regardless of the support platform.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81, or vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed.

4. A new § 165.T07–078 is added to read as follows:

§ 165.T07–078 Safety Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a safety zone: All waters within a 50 yards radius around a fireworks barge in the vicinity of Rousakis Plaza, Savannah River, Savannah, GA at an approximate position of 32° 04′ .55 N, 81° 05′ .27 W.

(b) *Effective dates.* This section is effective at 10 p.m. EDT and expires at 11 p.m. EDT on July 4, 1996, unless sooner terminated by the Captain of the Port, Savannah, GA.

(c) *Regulations.*

In accordance with the general regulations in Section 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his representative.

(2) The representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf regardless of the support platform.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81, vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed.

Dated: December 20, 1995.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–47 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, and 88

[AMS–FRL–5347–2]

RIN 2060–AF87

Sales Volume Limit Provisions for Small-Volume Manufacturers Certification of Clean-Fuel and Conventional Vehicle Conversions and Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On September 21, 1994, EPA published a final rule establishing emission standards for natural gas- and liquified petroleum gas-fueled vehicles and engines (''Gaseous Fuels Rule''). On September 30, 1994, EPA published the final rule establishing emission standards for clean-fuel vehicles (CFVs) and engines and requirements for CFV conversions (''CFV Standards Rule''). Included in each rule were provisions intended to extend the applicability of the existing vehicle sales volume limit under EPA's Small-Volume Manufacturers (SVM) certification program (10,000 vehicles) to aftermarket vehicle converters. In the case of the Gaseous Fuels Rule, the existing 10,000-vehicle volume limit was promulgated for aftermarket conversions as a final rule. In the case of the CFV Standards Rule, the 10,000 vehicle limit was presented as a direct final rule, to become final only in the absence of adverse comment.

Since adverse comments were received within the allotted time, the vehicle limit provision is not effective, and EPA is removing this provision elsewhere in today's Federal Register. In its place, this action proposes to establish the basic 10,000 vehicle/engine total annual sales eligibility limit for vehicle converters seeking CFV certification under the Small-Volume Manufacturers provisions. In addition, EPA proposes to implement a short-term mechanism which would allow converters of alternative fuel vehicles to petition EPA for an increase in the allowable volume limit when the nature of their business operations are substantially different than that of original equipment manufacturers.

To encourage the production of Inherently-Low Emission Vehicles (ILEVs), this action also proposes to allow additional options for external ILEV label dimensions. In this action, EPA is also proposing to amend two California Pilot Program (CPP) requirements: the method for determining a manufacturer's CFV sales quota and the method for administering CPP credits. Finally, this proposal includes several additional technical amendments to the regulations issued under Clean Fuel Fleet Program and California Pilot Program final rules (40 CFR part 86, subparts A and N, and 40 CFR part 88, subparts A, B, and C). In the Final Rules section of this Federal Register, EPA is finalizing these technical amendments to the Clean Fuel Fleet Program and California Pilot Program as a direct final rule without prior proposal because the Agency views these technical amendments as noncontroversial and anticipates no adverse comments. A detailed description of these technical amendments is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to the technical amendments in this proposed rule. If EPA receives adverse comments, the affected portions of the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposed rule.

This proposal would reduce the regulatory burden for industry (especially the aftermarket conversion industry), and it is highly accommodating to their concerns. In addition, this proposal would clarify and streamline existing regulations for certifiers and purchasers of clean-fuel and/or alternative fuel vehicles.

DATES: Comments on this proposal will be accepted until February 2, 1996. Additional information on the procedure for submitting comments can be found under ''Public Participation'' in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Interested parties may submit written comments in response to this action (in duplicate if possible) to Public Docket Nos. A–92–30 and A–92–14 for conversion provisions and Public Docket No. A–92–69 for CPP provisions, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket Nos. A–92–30, A–92–14, or A–92–69, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. A copy of the comments should also be sent to Mr. Bryan Manning (SRPB–12), U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Materials relevant to this action have been placed in Docket Nos. A–92–30 and A–92–14 or A–92–69 by EPA. The docket is located at the above address and may be inspected from 8:00 a.m. to 5:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning (SRPB–12), U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7832; FAX: 313–741–7816.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Accessing Electronic Copies of Rulemaking Documents through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this action is available through TTNBBS under OMS, Rulemaking and Reporting, Alternative Fuels, Clean Fuel Fleets. TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

B. Background

1. The Small-Volume Manufacturers (SVM) Certification Program.

As is shown in 40 CFR 86.094–14, the Small-Volume Manufacturers (SVM) certification program exempts entities seeking a Certificate of Conformity with total annual vehicle/engine sales less than 10,000 from EPA's full certification program. Specifically, the SVM provisions relieve such entities from some elements otherwise required to demonstrate the durability of emissions over the life of the vehicle. Instead of accumulating mileage on actual prototype vehicles, the SVM program in some cases permits the use of EPA-assigned values for emission deterioration. This can be of significant economic benefit to entities manufacturing or converting relatively few vehicles.

In the Gaseous Fuels (59 FR 48472) and the CFV Standards (59 FR 50042) rules, EPA intended to apply the SVM program to aftermarket converters in the same way the Agency has applied it to manufacturers of complete ''original equipment'' vehicles (OEMs), including the sales volume limit of 10,000 annual sales. Discussions of EPA's perspective on this regulatory provision were presented in Section II, Part B of the CFV Emission Standards Final Rule (See

59 FR 50063–50064; September 30, 1994) and Section III.I. of the Gaseous Fuels Final Rule (See 59 FR 48486; September 21, 1994).

2. Comments and EPA Responses.

In response to the SVM program volume limit provisions of the CFV Standards Final Rule and the Gaseous Fuels Final Rule, EPA received comments from the Natural Gas Vehicle Coalition (NGVC) objecting to an annual sales volume limit of 10,000 vehicles applying to converters seeking to certify under the provisions for small volume manufacturers. NGVC's primary comments were based on the concept that, in general, the nature and the economics of the conversion business is fundamentally different than the nature and economics of the OEM industry. Specifically, NGVC stated that the sale price of the respective products are very different. The OEM sells a complete vehicle, usually for well over $10,000. By comparison, an aftermarket converter begins with existing vehicles and adds new fueling technology, using equipment that typically costs around $1500, according to NGVC. From an economic perspective, this difference means that an OEM producing a certain number of vehicles will generally have more ability to absorb certification costs than a converter producing a similar number of vehicles. This is because the OEM could usually allocate part of the certification cost to each vehicle with less relative impact on the overall sale price than can a converter selling only the add-on equipment and installation.

NGVC requested the limit under the SVM provisions be raised to 30,000 for alternative fuel converters. This higher limit, NGVC believes, would remove the incentive for converters to limit sales to 10,000 or less in order to qualify for the SVM program (i.e., 10,000 sales volume limit is a detriment to the sales of alternative fuel conversions). NGVC's suggested 30,000 volume limit is based on their expectation that, within the next few years, a typical conversion system manufacturer will wish to offer certified kits for between 15 and 30 engine families, and average sales are likely to be 1,000 to 2,000 per engine family. According to NGVC's estimates of certification costs, the added cost of durability testing for engine families certified under the basic (non-SVM) program could double the total development and certification costs. NGVC believes that as sales of certified kits grow beyond 30,000, sales of the more popular engine families can be expected to reach 4,000 to 5,000 per engine family. At this level of sales, NGVC believes that the per-vehicle cost of full certification would become more reasonable.

NGVC also expressed concerns about other aspects of EPA's full certification program as they apply to conversions. They commented that certification on an engine family-by-family basis should be replaced by a grouping of engine families, since certification costs for low-production families are high on a per-vehicle basis. Second, NGVC presented their view that durability testing of conversion prototypes is duplicative of the OEM durability testing that would have already been done on the base vehicle.

EPA has considered each of these comments and proposes provisions in today's action which we believe addresses each concern. In general, EPA believes that there is and will continue to be a useful role for certified alternative fuel conversions in environmental and energy policy in the coming years. Further, EPA understands NGVC's argument that the economic nature of the conversion business differs substantially from that of the OEM business and that certification costs, whether under full certification or not, will tend to be relatively more burdensome for converters than for OEMs. Thus, in many cases, EPA believes that equity in terms of economic burden for certification for converters as compared to OEMs may warrant different treatment under the certification protocols for the two types of business activity.

However, the justification provided by NGVC for the specific sales volume limit of 30,000 lacked sufficient data and analysis to prove or disprove the appropriateness of any specific sales level. The cost of certification per vehicle is a function of whether relief from some certification protocols is available and the number of vehicles produced under a certificate. These variable factors exist in the context of the likely variety of business situations of future converters, some of which will be better able to recover additional costs from their customers than others. All of these factors will affect the level of sales at which the certification burden for an individual converter might become low enough to approach that of a typical OEM SVM. EPA is thus not prepared at this time to propose a specific volume limit for all converters beyond the existing 10,000 unit limit.

Regarding the comments relating to the burden of the broader certification process, EPA is also proposing in today's action to reduce certification burden for converters by providing flexibility in the regulations for determining deterioration factors. (See section II.B. for further description of this proposed action.) In addition, EPA is acting administratively, independent of this action, to provide additional flexibility to gaseous-fueled converters for determining their deterioration factors. EPA recently assigned deterioration factors for vehicles converted to operate on gaseous fuels.[1] Manufacturers may use mathematically derived assigned deterioration factors or generate their own deterioration factors using an abbreviated durability protocol (shortened-durability test of only 25,000 miles of operation). EPA believes that these temporary measures would greatly reduce the effort and expense required by this emerging industry.

II. Description of Action

A. Sales Volume Limit Provisions

Today's proposal is presented in two parts. First, to be consistent with the SVM provisions for OEM's and conventional conversions, EPA proposes to establish the 10,000 vehicle/engine sales volume limit for CFV converters under the small volume manufacturers provisions.

In addition, EPA proposes to make a waiver process available to alternative fuel vehicle converters which provides the opportunity for a converter to petition EPA to permit the use of SVM certification provisions at annual sales levels of 10,000 and above. This provision would be available for manufacturers converting vehicles/engines which meet 40 CFR 85 requirements (conventional conversions) and for those converting vehicles which meet 40 CFR 88 requirements (CFV conversions). Converters would need to demonstrate the need for a higher limit based on, but not limited to, data such as company sales projections and cost analysis or other information indicating that certification costs on a per-vehicle basis will be substantially greater than those for an OEM vehicle manufacturer. An analysis indicating why the specific volume limit requested is appropriate would also be necessary. In no case could the limit for any manufacturer exceed 30,000 total units. Converters would have to apply for a new waiver each model year.

EPA is proposing that this waiver process be available for a period of 5 years, through model year (MY) 2000. However, EPA also asks comment on whether a longer time period is more

[1] The assigned deterioration factors and the abbreviated durability protocol are expected to be specified in a ''Dear Manufacturer'' letter that would be available in docket A–92–14 and A–92–30 and on TTNBBS.

appropriate, and if so, what period of time and why.

EPA believes that having the petition process end by a specific date is necessary since the future conversion market is uncertain. This provision is most critical during the next several years as the alternate fuel vehicle conversion industry begins business in earnest in response to CAA, Energy Policy Act, and other alternative fuel fleet and vehicle programs at the state and local levels. With the anticipated sales growth in the industry as a whole and for the individual certifiers of conversions, the ability to recover certification costs increases over time. Conversely, since the difference in business activity and economics between converters and OEMs will not totally disappear with time, a longer term petition process may provide greater parity in certification cost between converters and OEMs. In any event, since certification costs tend to be relatively more burdensome for converters than for OEMs and EPA believes in equity in terms of economic burden for certification, the proposed petition process would only apply to aftermarket conversions and not producers of complete OEM vehicles.

B. Technical Amendments to the Clean Fuel Fleet Program and California Pilot Program

The technical amendments to the Clean Fuel Fleet Program and California Pilot Program that EPA considers to be noncontroversial will be finalized as a direct final rule (entitled, ''Requirements for Determining Assigned Deterioration Factors for Alternative Fuel Vehicles, Amendments to Labelling Requirements for Inherently Low-Emission Vehicles, and Related Provisions'') in the final rules section of today's Federal Register. These technical amendments pertain to 40 CFR part 86, subparts A and N, and 40 CFR part 88, subparts A, B, and C. See the information provided in the direct final rule for a detailed description of these technical amendments.

III. Environmental and Economic Impacts

The nature of today's proposed approach to the sales volume limit for the Small-Volume Manufacturers certification program is such that no impact on air quality should result. Given that there are no converters which have received a certificate as yet, it appears unlikely that any such entity will approach the 10,000 vehicle level for a few years. If and when that does occur, the result of a successful petition by a converter to increase the SVM sales volume limit will not seriously compromise EPA's confidence that certified emission levels are being met in use. The SVM provisions, while providing some relief in the requirements for durability demonstration, still do require an assessment of durability. While some loss of control could theoretically occur if the reduced durability demonstration were in serious error, the Agency does not believe that this is likely to be common and in any event the numbers of vehicles involved is not large in comparison to conventional vehicle production.

Today's proposed action may have a substantial economic benefit for converters. Depending on the sales level, the result of a successful petition by a converter to increase the SVM sales volume limit and thus be exempt from durability testing, could cut in half an engine family's development and certification costs.

For the relaxed ILEV labelling requirements, EPA believes that if the smaller but distinctive ILEV labels are used on an ILEV, they would still be able to be clearly identified by law enforcement officials. EPA expects that these changes would help encourage manufacturers to develop and produce ILEVs, which would in turn have a positive environmental impact relative to conventional vehicles.

With these proposed changes to the CPP program, EPA would ease the certification burden for manufacturers with no effect on air quality. This result would occur because the same number of vehicles will be sold under the CPP industry-wide; only the relative allocations among manufacturers might change.

In today's proposal, EPA would reduce the regulatory burden on industry without effecting air quality. EPA believes this proposal is highly accommodating to industry's concerns.

IV. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of today's proposal. Wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. All comments should be directed to EPA Air Docket, Docket No. A–92–30 and A–92–14 for the conversion provisions and Docket No. A–92–69 for the CPP provisions (See **ADDRESSES**). The official comment period will last for 30 days following publication of today's proposal.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

V. Statutory Authority

The statutory authority for this action is granted by Sections 202, 203, 206, 207, 241, 242, 243, 244, 245, 246, 247, 249, and 301(a) of the Clean Air Act.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA believes that this proposal is not a ''significant regulatory action'' within the meaning of the Executive Order. This proposal provides greater flexibility for converters seeking to certify under the small volume

manufacturers provisions, thus eliminating some of the certification burden for nearly all converters. ILEV labelling requirements have been proposed to be relaxed, reducing some of the certification burden for certifiers of alternative fuel vehicles. Today's proposal also reduces the certification burden for manufactures required to produce CFVs under the CPP, by providing more flexibility in CFV production planning and credit reporting.

VII. Compliance with Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of federal regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of ''small entity'', ''significant impact'', or ''substantial number'', EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[2] Section 604 of the Regulatory Flexibility Act requires EPA to prepare a Regulatory Flexibility Analysis when the Agency determines that there is a significant adverse impact on a substantial number of small entities.

Today's proposal will allow many if not all converters to certify their conversions under the small volume certification provisions. EPA has evaluated the effects of today's proposed regulation and the Administrator of EPA certifies that there would not be an adverse impact on a substantial number of small entities; in fact, most small converters will experience an economic benefit. Therefore, a Regulatory Flexibility Analysis has not been performed for this rule.

VIII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this proposal would be less than $100 million. EPA has determined that this proposal would reduce the regulatory burden imposed on certifiers of clean-fuel and/or alternative fuel vehicles (especially converters of such vehicles). EPA has determined that an unfunded mandates statement therefore is unnecessary.

IX. Paperwork Reduction Act

The information collection requirements for converters in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paper Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 783.34) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Today's proposal does not add any mandatory information collection requirements for converters or any other entity, but EPA has prepared an Information Collection Request document for this proposal since the collection of information would be needed for some converters to obtain or retain the benefit of SVM certification (collection of information required to obtain or retain a benefit). (Under section 301(a) of the Clean Air Act, the Administrator has the general authority ''... to prescribe such regulations as are necessary to carry out his functions under this Act.) For aftermarket converters who choose to petition EPA to be included under the SVM provisions at a higher sales volume, basic data on the projected sales, cost of certification, and why the specific volume limit requested is appropriate would need to be included in the petition to demonstrate economic hardship of the current sales volume limit. This ICR would be an amendment to the base Certification Program ICR, and the same confidentiality provisions in the base Certification Program ICR would apply to this ICR as well.

For this ICR, the projected annual average cost and hour burden (reporting and recordkeeping) for respondents would be $4,800 and 80 hours, respectively for the five year period 1996 through 2000 model year. For five respondents at five hours per response, the annual average reporting burden would be 60 hours. This converter ICR does not include capital and start-up costs, operation and maintenance costs, and purchases of services costs for the following reasons: there is not any testing burden associated with this ICR and prior to certification the respondents would have collected the necessary information for their own planning purposes. 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.

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.

Comments are requested 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. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M. St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after Janaury 3, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by February 2, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information collection requirements of the Credit Program for

[2] U.S. Environmental Protection Agency Memorandum to Assistant Administrators, ''Compliance With the Regulatory Flexibility Act'', EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, ''Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act'', EPA Office of Policy, Planning, and Evaluation, 1992.

California Pilot Test Program have been amended to reflect today's relaxation of the credit reporting requirements. These amended requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060–0229. A copy of the Information Collection Request document (ICR No. 1590) may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136); 401 M St. S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Send comments regarding this collection of information to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M. St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

List of Subjects

40 CFR Part 85

Environmental protection, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedures, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 88

Environmental protection, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 27, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 85 and 88 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 85—[AMENDED]

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7507, 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7601(a).

2. Section 85.501 of Subpart F is revised to read as follows:

§ 85.501 General applicability.

Sections 85.501 through 85.506 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

3. Section 85.503 of subpart F is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 85.503 Conditions of exemption.

(a) As a condition of receiving an enforcement exemption from the tampering prohibitions contained in section 203 of the Act, an aftermarket conversion certifier must certify the aftermarket conversion system, using the applicable procedures in part 86 of this chapter, and meeting the applicable standards and requirements in §§ 85.504, 85.505 and 85.506, and accept liability for in-use performance of the aftermarket conversion system as outlined in this part.

(b) * * *

(1) Install a conversion which has been certified as a new vehicle or engine, using the applicable procedures in part 86 of this chapter, and meeting the applicable standards and requirements in §§ 85.504, 85.505 and 85.506; and

* * * * *

4. A new § 85.506 is added to subpart F, to read as follows:

§ 85.506 Sales volume limit for the aftermarket conversion certifier under the small-volume manufacturers certification program.

(a) The optional small-volume manufacturers certification procedures as described in 40 CFR 86.092–14 apply to aftermarket conversions assembled by aftermarket conversion certifiers with U.S. sales of fewer than 10,000 units. An aftermarket conversion certifier with sales greater than 10,000 per year may petition the Administrator for permission to use the small-volume manufacturers certification procedures for conversions certified on or before December 31, 2000.

(1) The aftermarket conversion certifier shall demonstrate to the Administrator economic hardship of the 10,000 sales volume limit. At a minimum, the aftermarket conversion certifier shall provide to the Administrator the following data: company sales projections (by engine family), cost analysis indicating that certification costs on a per-vehicle basis will be substantially greater than those for an OEM vehicle manufacturer (i.e., incremental cost of full durability testing per vehicle), and an analysis indicating why the specific volume limit requested is appropriate. The Administrator may require additional data as he may deem necessary to demonstrate economic hardship of the 10,000 sales volume limit. The aftermarket conversion certifier must receive approval from the Administrator on a case by case basis to waive the 10,000 sales volume limit, and the certifier shall apply for a new waiver each model year. In no case shall the sales volume limit for any petitioner exceed 30,000.

(2) For aftermarket conversions certified after December 31, 2000, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) shall apply.

(b) The sales volume limit provided in paragraph (a) of this section shall apply to the aggregate total of all vehicles sold by a given aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the conversions are based. All vehicle sales will be included in calculating the aftermarket conversion certifier's aggregate total, including vehicle conversions performed under the requirements of this part 85 and 40 CFR part 88 (clean-fuel vehicle conversions), and all other vehicle conversions. Vehicle conversions not covered by this part 85 will be counted if they occur within the model year for which certification is sought.

PART 88–CLEAN-FUEL VEHICLES

5. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

6. Section 88.306–94 of subpart C is amended by revising paragraph (b)(3) to read as follows:

§ 88.306–94 Requirements for a converted vehicle to qualify as a clean-fuel fleet vehicle.

* * * * *

(b) * * *

(3) For the purpose of determining whether certification under the Small-Volume Manufacturers Certification Program pursuant to the requirements of 40 CFR 86.092–14 is permitted for the clean-fuel vehicle aftermarket conversion certifier, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) shall apply. A clean-fuel vehicle aftermarket conversion certifier with sales greater than 10,000 per year may petition the Administrator for permission to use the small-volume certification procedures for conversions certified on or before December 31, 2000.

(i) The clean-fuel vehicle aftermarket conversion certifier shall demonstrate to the Administrator economic hardship of the 10,000 sales volume limit. At a minimum, the clean-fuel vehicle aftermarket conversion certifier shall provide to the Administrator the following data: company sales projections (by engine family), cost analysis indicating that certification costs on a per-vehicle basis will be substantially greater than those for an OEM vehicle manufacturer (i.e., incremental cost of full durability testing per vehicle), and an analysis indicating why the specific volume limit requested is appropriate. The Administrator may require additional data as he may deem necessary to demonstrate economic hardship of the 10,000 sales volume limit. The clean-fuel vehicle aftermarket conversion certifier must receive approval from the Administrator on a case by case basis to waive the 10,000 sales volume limit, and the certifier shall apply for a new waiver each model year. In no case shall the sales volume limit for any petitioner exceed 30,000.

(ii) For clean-fuel vehicle aftermarket conversion configurations certified after December 31, 2000, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) shall apply.

(iii) The sales volume limit provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall apply to the aggregate total of all vehicles sold by a given clean-fuel vehicle aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the conversion configurations are based. All vehicle sales will be included in calculating the clean-fuel vehicle aftermarket conversion certifier's aggregate total, including vehicle conversions performed under the requirements of this part 88, and all other vehicle conversions. Vehicle conversions not covered by this part 88 will be counted if they occur within the model year for which certification is sought.

* * * * *

[FR Doc. 96–104 Filed 1–2–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 94–20; Notice 2]

RIN 2127–AF16

Light Truck Average Fuel Economy Standard, Model Year 1998

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish an average fuel economy standard for light trucks manufactured in model year (MY) 1998. The issuance of a standard is required by statute. The agency is proposing to set a combined standard for all light trucks at 20.7 miles per gallon (mpg) for MY 1998.

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments must refer to the docket and notice number set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW, Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submission containing information for which confidential designation is requested should be submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW, Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change into Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the establishment of average fuel economy standards for cars and light trucks.

Section 32902(a) of Chapter 329 requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. Chapter 329 provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining the maximum feasible average fuel economy level, the Secretary is required under section 32902(f) to consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Such standards must be established no later than 18 months prior to the beginning of the model year in question. Pursuant to this authority, the agency has set Corporate Average Fuel Economy (CAFE) standards through MY 1997. The standard for MY 1997 is 20.7 mpg.

Following the establishment of the light truck fuel economy standards through 1997, the process of establishing standards for model years after MY 1997 began with the publication of an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register (59 FR 16324) on April 6, 1994. The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006. The ANPRM solicited comments through, among other things, nine questions designed to assist the agency in developing the proposed standards.

Comments were submitted by six manufacturers: Ford, General Motors (GM), Chrysler, Nissan, Toyota, and the Rover Group. Comments were also submitted by the American Automobile Manufacturers Association (AAMA), the American Council for an Energy Efficient Economy (ACEEE), the Coalition for Vehicle Choice (CVC), the Competitive Enterprise Institute, and many other organizations and private individuals.

On November 15, 1995, Congress enacted the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996, P.L. 104–50. A provision in that Act precludes the agency from using any funds appropriated for that year to

> prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such

automobiles prior to enactment of this section. (Section 330, P.L 104–50)

Since CAFE standards must be set no later than eighteen months before the model year in question, the agency must adopt the MY 1998 standard during FY 1996.

The possibility of setting light truck CAFE standards for a multi-year period raises complex issues, many of which were addressed by the comments on the ANPRM. Faced with a statutory deadline of approximately April 1, 1996, for promulgating a standard for MY 1998, the agency has decided to defer rulemaking for MY's 1999–2006. In this notice, the agency is therefore proposing a standard only for MY 1998.

II. Overview of Proposal

This notice proposes to establish an average fuel economy standard for light trucks of 20.7 mpg for MY 1998. The agency's proposal is based on information derived from a variety of sources. One major source is the submissions received in response to the April 6, 1994, ANPRM, which are available in Docket No. 94–20–No.1. The agency's decision is, of course, constrained by the provisions of P.L. 104–50 noted above.

As a part of proposing a standard, this notice discusses a variety of issues which are being considered by the agency, all of which are relevant to the statutory criteria in Chapter 329. In providing a comment on a particular matter, commenters are requested to provide all relevant factual information to support conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

III. Manufacturer Capabilities for MY 1998

In evaluating manufacturers' fuel economy capabilities for MY 1998, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice. Some of the information included in the PRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the PRIA omits the confidential information.

A. Manufacturer Projections

1. General Motors

In an August 1994 submission General Motors projected CAFE within a range of 21.1 to 21.9 mpg for the 1998 model year. GM submitted a revised estimate on May 31, 1995, indicating that certain technological improvements and other changes it had anticipated could not be implemented in the time period outlined in its first submission. The May 31, 1995, submission projected a range of 20.6 to 21.3 mpg. This compares to a projection of 19.8 mpg for MY 1995 from GM's mid-model year report of July 31, 1995.

2. Ford

Ford projected in August 1994 that it could achieve a CAFE level within a range of 20.4 to 21.0 mpg for MY 1998. This compares to a July 1995 mid-model year report projection of 20.6 mpg for MY 1995.

3. Chrysler

Chrysler projected in August 1994 that it could achieve a CAFE level of 21.0 mpg for MY 1998. This compares to a mid-model year report projection of 20.1 mpg for MY 1995. Chrysler submitted a revised estimate for MY 1998 of 20.1 mpg on September 18, 1995, which was received (13 months after the end of the comment period) too late to be considered for this NPRM. However, the agency will consider these new data prior to taking final action on the MY 1998 Standard.

4. Other Manufacturers

Most of the other light truck manufacturers exceed the CAFE levels of the large domestic manufacturers. The exceptions are the Rover Group, which projected 16.3 mpg for the 1995 model year in July 1995, and Volkswagen, a manufacturer of passenger vans, which projected 18.6 mpg for the 1995 model year in July 1995. Mercedes-Benz plans to enter the light truck market with a sport utility vehicle whose CAFE level is unknown.

Nissan, Toyota and the Rover Group submitted comments in response to NHTSA's April 6, 1994 notice.

Nissan's submission did not contain any projections for specific model years. Its 1995 mid-model year report indicated a 1995 CAFE level of 22.5 mpg. The Rover Group's submission also did not contain any projections for the 1998 model year. The Rover Group indicated in its August 1994 submission that it could not attain significant improvements in fuel economy until MY 2002 or later. Toyota's August 1994 submission projected a 1998 MY CAFE of 22.4–23.0 mpg. This compares to a July 1995 mid-model year report projection of 21.2 mpg for MY 1995.

B. Possible Additional Actions Affecting MY 1998 CAFE

1. Further Technological Changes

NHTSA has considered whether manufacturers can use further technological changes to improve their CAFE beyond their August 1994 projections for MY 1998. The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's PRIA discusses the fuel efficiency enhancing technologies which are expected to be available during the MY 1998 time period. A significant potential constraint on the increased use of these technologies for MY 1998 is the limited leadtime. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1996–97, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and establish quantity production is typically 30 to 36 months. Some potential major changes may take even longer. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact.

Given the leadtime constraints, the agency does not believe that manufacturers can achieve a significant improvement in these projected CAFE levels for MY 1998 by additional technological actions.

2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse effects on vehicle sales, or industry-wide employment, if consumers elected to retain older vehicles longer than usual or purchase the product of a competitor that was not similarly constrained. If consumers

chose instead to purchase vehicles over 8,500 pounds GVWR, which are not subject to CAFE standards, this shift would have the additional effect of defeating the energy-saving aims of the CAFE program. The agency's preliminary analysis of manufacturer capabilities indicates that 20.7 mpg is an appropriate level for the least capable manufacturer with a significant market share.

Application of a standard that would require product restrictions could have a substantial economic impact. In its most recent previous light truck CAFE rulemaking, the agency estimated the loss of production associated with sufficient product restrictions to raise the CAFE of the least capable manufacturer by 0.5 mpg. This analysis, contained in the final rule establishing MY 1996–97 light truck CAFE standards published in the Federal Register on April 6, 1994 (59 FR 16312), indicated that product restrictions could result in significant losses in production. This loss of production would cause hardship in the automobile industry and result in the loss of jobs and other economic effects. In addition to the adverse impacts on the automotive industry, the analysis concluded that a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could unduly limit consumer choice.

Given these considerations, which the agency believes are equally applicable to MY 1998, NHTSA tentatively concludes that product restrictions should not be considered as part of manufacturers' capabilities to improve MY 1998 CAFE.

C. Manufacturer-Specific CAFE Capabilities

Of the manufacturers producing light trucks for sale in the U.S. in MY 1995, only two were projecting a CAFE lower than the large major domestic manufacturers: the Rover Group and Volkswagen. The Rover Group imports a small number of luxury 4WD utility vehicles and Volkswagen imports a small number of passenger vans. Because none of these fleets have a significant share of the U.S. market, and because the agency must set standards on an ''industry-wide'' basis, the discussion in this section will be limited to the capabilities of the three large domestic light truck manufacturers: Chrysler, Ford, and GM. Each of these manufacturers has at least 20 percent of the light truck market, which NHTSA considers a representation of ''industry-wide'' effects.

1. Chrysler

Chrysler's projected CAFE level is 21.0 mpg for MY 1998. In its submission, Chrysler discussed uncertainties associated with specific technologies and risks in forecasting future CAFE capabilities. It did not, however, quantify the fleet-wide effect of these risks and uncertainties except in the case of Federally mandated emissions and safety requirements.

Chrysler calculated a weight increase for each of the new safety and emissions requirements that will become effective during MY 1998 and derived a fuel economy effect for each of them. The agency accepts these figures except as discussed below.

The agency does not agree with any weight penalty for Federal Motor Vehicle Safety Standard (FMVSS) 214 for MY 1998 because compliance with the newly issued standard (60 FR 38749; July 28, 1995) should not add additional weight and the final rule will not apply until MY 1999. Similarly, the agency also will not consider any weight penalty for Federal Motor Vehicle Safety Standard (FMVSS) 206, as compliance with the requirements of recent amendments (60 FR 50124; September 28, 1995) should not add additional weight. The agency also will not consider projected penalties for safety rulemakings for which it has not issued a proposal, namely enhanced frontal impact (FMVSS 208) and side glazing ejection protection (FMVSS 205), since these standards, if amended, are unlikely to apply to MY 1998. However, if Chrysler plans to improve, voluntarily, the safety of its vehicles in these areas, NHTSA will consider the specific improvements and their CAFE effects.

Chrysler also projected a fuel economy effect for Federal Test Procedure (FTP) emissions test changes that will penalize fuel economy performance as measured in the laboratory. These test procedure changes include the effect of testing California cars with California Phase II fuel and the conversion to the 48—inch electric dynamometer.

The California Phase II fuel has a lower energy content than the reference fuel used for fuel economy testing for vehicles not meeting the California requirements. EPA intends to apply a correction to account for this energy loss, but Chrysler believes that the correction accounts for only half of the penalty, leaving a 2 to 3 percent net loss. EPA, however, has advised NHTSA that manufacturers may still run the fuel economy test using the present Indolene fuel, so there is no need for a manufacturer to count a fuel economy penalty for fuel changes. Chrysler also estimates the change to the 48 inch dynamometer will produce fuel economy losses of 3 to 6 percent, although this is preliminary. EPA has indicated that its proposed test procedure revisions, including the 48-inch electric dynamometer, are unlikely to be in effect for MY 1998.

Eliminating Chrysler's provision for weight effects attributed to FMVSS 214, FMVSS 208 enhanced frontal impact, FMVSS 205, FMVSS 206, FTP revision, and the use of the 48-inch dynamometer leaves Chrysler's projected MY 1998 CAFE of 21.0 mpg unchanged. Without consideration of Chrysler's revised submission of September 18, 1995, the agency tentatively concludes that Chrysler's fuel economy capability for MY 1998 is 21.0 mpg.

2. Ford

In its submission in response to the ANPRM, Ford projected a MY 1998 CAFE of 21.0 mpg and presented information in support of its contention that a combination of risks and opportunities applicable to MY 1998 result in CAFE of only 20.4 mpg.

Ford quantified a number of risks and minor opportunities, allocating much of the total risk to safety and emissions requirement effects. Ford also noted that there may be additional unquantified risks.

The safety portion of the risk is described in Ford's comment as due to additional weight to meet the proposed dynamic side impact test in FMVSS 214. As discussed above, this standard will not take effect in MY 1998. In regard to emissions, NHTSA requested that EPA review the emissions risk contained in Ford's proposal. EPA's response was that it is unlikely that the electric 48-inch dynamometer and its other proposed test procedure revisions will apply to 1998 model year vehicles. Based on these supporting comments, NHTSA removes the 48-inch dynamometer and FMVSS 214 risks.

The net of technological (non-regulatory) risks and opportunities for MY 1998 is also outlined in Ford's submission. NHTSA believes that these are reasonable corrections to the Ford nominal projections because there is an acknowledged risk that technologies will not always achieve their expected benefit and that, in combination with other technologies, the total gain does not equal the sum of the individual improvements taken alone.

Using the net of technological risks and opportunities and discarding the

claimed emissions and safety penalties leads NHTSA to estimate the MY 1998 Ford fleet CAFE capability to be 20.9 mpg.

3. General Motors

In its revised response to the ANPRM, General Motors projected a MY 1998 CAFE of 21.3 mpg along with a ''higher confidence'' estimate of 20.6 mpg. This represents a reduction of its prior estimate, submitted in August of 1994, of a projected 1998 MY CAFE of 21.1 to 21.9 mpg. GM attributed the change in its projection to the unavailability of technical improvements and other changes it had previously believed would be implemented by MY 1998.

GM provided a general discussion of the uncertainties about actually meeting the projected 21.3 mpg level. These uncertainties included the possibility of falling fuel prices causing consumer resistance to the purchase of the more fuel efficient models, an increased demand for higher performance, and the availability of fuel efficient technologies in competition with emission and alternative fuels mandates. In assessing the risks of each projected technology, GM accumulated certain estimated risks for MY 1998. These adjustments include possible detrimental mix shifts and under performance or delays of various new technologies. GM stated that it used a ''probabilistic approach'' to develop the risks that result in its ''higher confidence'' CAFE projection of 20.6 mpg for MY 1998. GM has not revealed the details of this analysis to the agency. Nonetheless, the agency agrees that there are risks to the introduction of new models and technologies on schedule and the achievement of the full potential of new technologies. NHTSA believes that the GM risk estimate, much of which is attributable to further mix shifts and the possible underachievement of technical improvements in earlier years, is excessive by at least 0.1 mpg. Thus, the agency tentatively concludes that GM's baseline capability for MY 1998 is 20.7 mpg.

GM also pointed out in its May 31, 1995, submission that its model mix puts it at a disadvantage relative to other manufacturers for CAFE performance. GM included a computation that showed that if GM produced the same model mix in MY 1994 as Ford did, its CAFE would be 1.16 mpg higher. (Ford's fleet most nearly matches GM's in array of models offered.) The agency was able to replicate this value using its own databases from manufacturers' fuel economy reports.

Thus, the baseline ''higher confidence'' GM fleet projection of 20.6 mpg may be increased by discarding 0.1 mpg of the risk used by GM to establish the differential between its higher confidence estimate of 20.6 mpg and its lower confidence estimate of 21.3 mpg. As noted above, the agency believes that this risk, set by GM as 0.7 mpg, is overstated by 0.1 mpg and fails to account for control over mix shifts and the complete development of technical improvements. Adding this 0.1 mpg to the higher confidence estimate of 20.6 mpg yields a CAFE capability of 20.7 mpg for General Motors for MY 1998.

In summary, the agency tentatively concludes that the CAFE capability of the three domestic manufacturers for MY 1998 is as follows:

Manufacturer	MY 1998
Chrysler	21.0
Ford	20.9
GM	20.7

There are, of course, uncertainties, as well as new information in late-filed comments, which may require these projections to be adjusted. NHTSA notes that variations may occur in the light truck mix in response to consumer demand, fuel prices and fuel availability. Also, as noted elsewhere, application of fuel saving technologies and other improvements involving substantial redesign may not be possible for the 1998 model year due to leadtime considerations.

IV. Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on manufacturers' fuel economy capability for MY 1998.

A. Safety Standards

NHTSA has adopted several safety standards that have been analyzed for their potential impact on light truck fuel economy capabilities for MY 1998. They are discussed below.

FMVSS 208 (Automatic Restraints)

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a Gross Vehicle Weight Rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These requirements phase in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Although light truck manufacturers may comply with the automatic restraint requirements by using automatic belts, ''passive interiors,'' or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102–240) required NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998 light trucks be equipped with both driver and passenger-side air bags, and that all MY 1999 light trucks be equipped with driver and passenger-side air bags. On September 2, 1993, NHTSA published a final rule in the Federal Register (58 FR 46551) to implement this requirement.

In the 1991 Final Regulatory Impact Analysis for the light truck automatic restraint rulemaking, NHTSA estimated weight increases per vehicle of 35.7 pounds for the combination of driver and right-front passenger air bags (including ''secondary weight''—i.e., weight added for supporting structure, etc.). Fuel economy would be reduced by about 0.12 mpg.

The manufacturers' estimates of the average weight effect of mandatory air bags were generally consistent with the agency's estimate of 35.7 pounds. The weight effects of FMVSS 208 are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to adjust their projections to consider the impact of this standard. In addition, because NHTSA expects manufacturers to rely on driver- and passenger-side air bags to meet the requirement that 90 percent of MY 1997 light trucks be equipped with some form of passive restraint, the incremental effect of going from 90 percent passive restraints to 100 percent automatic restraints (and at least 80

percent airbags) in MY 1998 is very small. This incremental increase in air bag usage should reduce MY 1998 fuel economy capabilities by only about 0.012 mpg.

FMVSS 208 (Safety Belt Comfort and Fit)

On August 3, 1994, NHTSA published a final rule (59 FR 39472) requiring that lap/shoulder belts installed for adjustable seats in vehicles with a GVWR of 10,000 pounds or less either be integrated with the seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different-sized occupants. The effective date for the rule is September 1, 1997 (or, essentially, MY 1998). This rule was issued in response to an Intermodal Surface Transportation Efficiency Act requirement that NHTSA address the matter of improved design for safety belts.

The agency believes that adjustable upper anchorages and seat-frame-mounted anchorages are the most likely compliance measures. Integrated seats (in which a belt design is incorporated into the seat) are another compliance option, but high costs are expected to delay their widespread use. NHTSA expects that this rule will result in an average weight increase of about one pound per vehicle. This translates into a fuel economy loss of less than 0.004 mpg.

FMVSS 214 (Side Impact Protection)

On July 28, 1995 NHTSA issued a final rule (60 FR 38749) extending dynamic testing requirements for side impact protection to light trucks, multipurpose passenger vehicles and buses with a GVWR of 6,000 pounds or less manufactured after September 1, 1998. The test will require a light truck to provide occupant protection in a side-impact crash test.

The new side impact rule incorporates the moving deformable barrier used in the passenger car requirements of FMVSS 214, with no change in height or weight.

NHTSA has concluded that the extension of the passenger car dynamic side impact requirements to light trucks will not result in weight increases to the average vehicle, and certainly will not cause any weight increases in MY 1998. Accordingly, the agency does not believe that there is a CAFE penalty imposed by the new requirements of Standard 214.

FMVSS 216 (Roof Crush Resistance)

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. The standard establishes strength requirements for the forward portion of the roof to increase the resistance of the roof to intrusion and crush.

NHTSA is researching the area of improved roof crush strength. Chrysler mentioned the possibility of upgraded requirements in this area. Ford also noted that ''[r]esearch is also being conducted which could result in more stringent roof crush for rollover protection.'' Because NHTSA has not issued a proposal in this area, no CAFE effect is assumed for MY 1998.

FMVSS 201 (Interior Head Impact Protection)

The Intermodal Surface Transportation Efficiency Act of 1991 required that NHTSA initiate and complete rulemaking to address ''improved head impact protection from interior components of passenger cars (i.e., roof rails, pillars, and front headers).'' On August 18, 1995, NHTSA issued a final rule amending FMVSS 201 (58 FR 7506) to require passenger cars and light trucks with a GVWR of 10,000 pounds or less to provide protection when an occupant's head hits upper interior components (such as A-pillars and side rails) during a crash. The estimated weight effects for trucks from changes to this standard would be 6–9 pounds per vehicle. A weight increase of 9 pounds per light truck would translate into a fuel economy penalty of about 0.03 mpg. However, as the amendments call for phase-in beginning with MY 1999 vehicles, the FMVSS 201 amendments will have no impact on MY 1998 CAFE.

Anti-Lock Brakes

The Intermodal Surface Transportation Efficiency Act of 1991 required that NHTSA initiate rulemaking to ''consider the need for any additional brake performance standards for passenger cars, including antilock brake standards.'' On January 4, 1994, NHTSA issued an ANPRM (see 59 FR 281) to request information on the desirability of requiring that passenger cars *and light trucks* be equipped with anti-lock brake systems (ABS). For MY 1993, 52 percent of domestic and imported light trucks were equipped with 2-wheel ABS and 31 percent were equipped with 4-wheel ABS.

In the Preliminary Economic Assessment accompanying the ABS ANPRM, NHTSA estimated that 4-wheel ABS would add 13 pounds to the weight of a non-ABS vehicle. A rear-wheel-only ABS was estimated to add 7.2 pounds. These estimates do not include any consideration of secondary weight. If all light trucks were equipped with 4-wheel anti-lock brakes, the fleet average increase in weight relative to MY 1993 installation rates would be about nine pounds. This would reduce the average CAFE level by about 0.03 mpg.

Manufacturers are voluntarily increasing the installation of ABS on light trucks in response to consumer demand. In their responses to the ANPRM, Ford, General Motors and Chrysler all included CAFE weight penalties for equipping varying proportions of their fleets with anti-lock brakes. As the agency does not wish to impede voluntary adoption of safety improvements, it will accept the manufacturers' projected penalties rather than apply a single reduction in setting MY 1998 light truck CAFE.

FMVSS 206 (Door Locks and Door Retention Components)

On September 5, 1995 (60 FR 50124), NHTSA issued a final rule to extend the existing side door requirements of FMVSS 206 to the back doors of passenger cars, as well as multi-purpose vehicles with gross vehicle weight ratings below 8,500 pounds. This includes sport utility vehicles and passenger vans. The purpose of the amendment is to reduce the likelihood of occupants being ejected through rear hatches, tailgates, and other rear doors of these vehicles in crashes. This standard becomes effective on September 1, 1997.

NHTSA also is considering a general upgrade in the stringency of FMVSS 206 to reduce door openings and associated ejections. In August 1988, NHTSA published an ANPRM describing alternative measures to reduce ejection and, on July 12, 1995, NHTSA published a Federal Register notice (60 FR 35889) announcing a public meeting on a potential upgrade of FMVSS 206. NHTSA has conducted studies of crash-involved vehicles where door latch failures may have occurred. NHTSA also has conducted tests to determine the strength of latches on various vehicles. However, at this point, NHTSA has not issued a specific proposal to amend the standard.

For MY 1998 CAFE, NHTSA is assuming no measurable CAFE impact for upgrading latch strength in response to the agency's final rule. Agency comparisons of complying and non-complying latches showed no significant weight differences. Also, no specific proposal has been issued on a more general upgrade of FMVSS 206; thus, any potential weight or CAFE impacts would be purely speculative.

FMVSS 205 (Glazing Materials)

NHTSA published two ANPRMs in 1988 announcing that the agency was considering proposing requirements for passenger vehicles to reduce the risk of ejections in side impact crashes. One notice (53 FR 31712, August 19, 1988) dealt with passenger cars. The other (53 FR 71716, August 19, 1988) dealt with light trucks. The agency reported that a significant number of fatalities and serious injuries involved partial or complete ejection of occupants through doors and side windows.

In addition, a Rulemaking Plan entitled ''Planning Document for Rollover Prevention and Injury Mitigation'' was published for public comment on September 29, 1992 (57 FR 44721). This document included a section concerning ejection mitigation using glazing. It noted that the agency was considering rulemaking to reduce ejections through side window glazing.

Because NHTSA has not issued a proposal in this area, no CAFE effect is assumed for MY 1998.

FMVSS 301 (Fuel System Integrity)

On April 12, 1995, NHTSA published an advance request for comment (60 FR 18566) on upgrading FMVSS 301 in a 3-phased approach. In the notice, the agency stated its desire to reduce the number of fire-related casualties to occupants of passenger cars and light trucks.

This is another area where NHTSA has not issued a specific proposal to upgrade the existing standard. Therefore, no estimate can be made of possible impacts on MY 1998 light truck fuel economy capabilities.

Bumpers

Toyota's response to the ANPRM indicated a possible fuel economy loss due to upgraded bumpers in response to a bill introduced in Congress in 1994. NHTSA has not proposed any upgrading of the bumper standard (nor has this bill passed) and has therefore not included any effect for this item in determining manufacturers' light truck fuel economy capabilities.

B. Voluntarily-Installed Safety Equipment

In their comments on the ANPRM, a number of light truck manufacturers indicated they would be installing some safety equipment that is not required by Federal Motor Vehicle Safety Standards.

Daytime Running Lights

On January 11, 1993, NHTSA published a final rule (58 FR 3500) facilitating the introduction of daytime running lights (DRLs) as items of optional motor vehicle lighting equipment. The rule was designed to ensure that auto manufacturers may offer DRLs in all 50 states, and to adopt specifications so that DRLs do not reduce the current level of highway safety.

In its ANPRM response, General Motors indicated that it would begin the voluntary phase-in of DRLs in MY 1995. The company said the weight increase would be about one pound. EPA has decided to conduct fuel economy and emissions testing with the DRL system deactivated until further information is available on the actual safety benefits of the system. GM stated, ''Since the DRLs will not be energized during fuel economy testing and since the additional weight of the system is negligible, GM's truck CAFE will not be significantly impacted. However, if the policy for fuel economy testing is changed a CAFE penalty would occur.''

Other Voluntarily-Installed Safety Equipment

The effect of other voluntarily-installed safety equipment (i.e., traction control, and built-in child restraints) on fuel economy is estimated to be negligible for MY 1998. Any impact for each company is included in the manufacturers' estimates of fuel economy capability.

Conclusions

The great majority of light truck safety standards that have been promulgated in recent years will be in full effect before MY 1998. New safety standards *known* to be going into effect during MY 1998 (or for which NHTSA has issued an NPRM) will have a negligible impact on light truck manufacturers' fuel economy capabilities. The anticipated reduction in MY 1998 CAFE capability attributable to these standards is less than 0.02 mpg, with 0.012 mpg attributed to mandatory air bags (FMVSS 208), 0.004 mpg attributed to improved belt fit (FMVSS 208), and no fuel economy penalty for dynamic side impact (FMVSS 214) or the application of FMVSS 206 to rear doors.

Based on manufacturer responses to the ANPRM, the post-1997 CAFE effect of voluntarily-installed safety equipment will be negligible. Typical safety equipment that light truck manufacturers are voluntarily installing on some models today (such as greater-than-required use of air bags, anti-lock brakes, built-in child restraints, and traction control) will be in widespread use before MY 1998. Thus, there will be little impact from additional voluntary installations of such equipment in the post-1997 period.

C. Environmental Requirements

Revised Federal Exhaust Emissions Standards

The Clean Air Act Amendments of 1990 impose more stringent exhaust emissions standards on light trucks. Under the Clean Air Act Amendments, new standards (so-called ''Tier I'' standards) for trucks apply to all MY 1996 and later trucks with GVWRs up to 6,000 pounds. All light trucks over 6,000 pounds GVWR must meet the new standards in MY 1997 and later.

In its response to the ANPRM, General Motors stated that, ''* * * initial indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains in 1996 MY to comply with these standards.''

Chrysler stated, ''The combination of calibrating to the tighter emission standards and the increase in weight due to the additional hardware necessary to meet standards will have a negative effect on fuel economy.'' This loss appears to be included in Chrysler's MY 1998 baseline fuel economy. Ford did not specifically address Tier I emission requirements in its ANPRM response.

NHTSA believes that compliance with the Tier 1 requirements does not impose any significant CAFE penalty. In addition, because these standards are in full effect before MY 1998, they should cause no additional loss in MY 1998 light truck fuel economy capabilities.

Evaporative Emission Standards and Onboard Vapor Recovery

The Clean Air Act Amendments also required EPA to promulgate regulations covering evaporative emissions (1) during operation (so-called ''running losses'') and (2) over two or more days of non-use. These revised regulations begin taking effect in MY 1996, applying to 20 percent of vehicles in that model year, increasing to 40 percent in MY 1997, 90 percent in MY 1998, and 100 percent for MY 1999 and subsequent model years. Onboard vapor recovery requirements begin taking effect in MY 2001.

In its ANPRM response, General Motors said that the weight gains associated with meeting both of these requirements are small and the corresponding truck CAFE impact would be negligible. Ford did not specifically address either item in its response. Chrysler's response contains estimates for fuel economy loss in meeting these requirements.

NHTSA asked EPA to review the manufacturers' comments on the possible fuel economy effects of

upcoming and potential light truck emission regulations. In its response, EPA addressed a number of emission regulations.

With regard to enhanced evaporative and onboard refueling vapor recovery requirements, EPA indicated that new evaporative procedures and on-board vapor recovery standards are likely to require larger canisters to comply. The larger canisters add an estimated 2 pounds for enhanced evaporative requirements and somewhat less than 10 pounds for on-board vapor recovery systems. EPA also indicated that different test procedures governing canisters in tests for emissions and fuel economy will negate any potential fuel economy loss involving onboard canisters. NHTSA estimates that EPA's projection of about a 12-pound weight increase for enhanced evaporative and onboard refueling vapor recovery requirements would translate into a fuel economy loss of about 0.04 mpg. However, only the evaporative requirements would affect MY 1998 fuel economy levels; their impact would be less than 0.01 mpg.

Potential Revisions to the Federal Test Procedure

The 1990 Clean Air Act Amendments require EPA to review (and revise as necessary) the Federal Test Procedure (FTP) to ensure that vehicles are tested under circumstances reflecting actual driving conditions. EPA published an NPRM on the FTP on February 7, 1995.

In its ANPRM response, General Motors stated, ''It is likely that the FTP might change during the period considered in [NHTSA's light truck fuel economy] ANPRM. If changes are enacted that impact fuel economy testing, CAFE would be impacted unless EPA *fully* compensates for any CAFE penalty.''

Ford stated that the use of the electric 48-inch dynamometer may significantly decrease measured fuel economy. In Ford's view, the proposed FTP revisions would have a negative impact on fuel economy.

Chrysler stated that additional hardware may be needed to meet the new standards, thus increasing weight and negatively impacting fuel economy testing if the requirements result in additional vehicle weight or higher applied engine loads. Chrysler claimed fuel economy losses of 3–6 percent have been measured using the electric dynamometer.

Chrysler claimed a substantial fuel economy loss for potential test procedure changes including losses of 0.6–1.2 mpg in MY 1998.

In EPA's response to NHTSA with regard to revised FTP requirements, EPA stated:

> Revised FTP standards are not likely to reduce the fuel economy during fuel economy testing. The additional off-cycle tests required will likely have lower fuel economy; however, only the FTP would be used for fuel economy purposes.

NHTSA believes that the possible higher speed/higher acceleration and air conditioning tests will not have a significant effect on MY 1998 light truck CAFE capabilities. As EPA indicates that it is unlikely that its proposed test procedure revisions, including the use of 48-inch dynamometers, will apply to 1998 model year vehicles, NHTSA is not making any correction for their use in determining the MY 1998 light truck fuel economy standards.

California Requirements

In 1991, the California Air Resources Board approved Low-Emission Vehicle (LEV) and Clean Fuels regulations. These regulations establish stringent emissions standards for four new classes of low-emission vehicles and require auto manufacturers to meet an annual, increasingly stringent, fleet-average standard for non-methane organic gas (NMOG) emissions. In addition, California ''Phase II'' reformulated gasoline is required to be available at the pump by January 1, 1996. The Phase II fuel has a number of different characteristics from the Indolene fuel currently used for fuel economy testing. EPA indicates that the energy content (BTUs/gallon) of California Phase II fuel is about 2–3 percent lower than Indolene. Lower energy content results in lower measured fuel economy, in miles per gallon.

In its response to NHTSA's fuel economy ANPRM, Ford indicated that compliance with California's NMOG standards would result in fuel economy penalties relative to a MY 1997 baseline. With regard to the California emissions standards, General Motors stated that if an electrically heated catalyst (EHC) is used to meet the LEV/ULEV requirement, it would cause at least a 3 percent fuel economy loss in these vehicles. Nissan claimed a 2.1 percent fuel economy penalty for ''Emissions (LEV).'' Chrysler did not claim that the California LEV emissions control requirements would have any impact in MY 1998.

The impacts of the California emissions standards are somewhat uncertain. The fuel economy losses claimed by Ford and Chrysler are specifically outlined in their submissions. However, because essentially all of their impacts occur in the post-1998 period, NHTSA has not included these adjustments in determining these companies' fuel economy capabilities. In addition, the claims made by GM and Nissan for California-standards-induced fuel economy losses in their ANPRM responses were not specific enough for the agency to make any adjustment to their fuel economy projections.

Chrysler also raised an issue about the impacts of California reformulated gasoline on fuel economy. The company stated that the fuel economy values for vehicles tested using California Phase II gasoline will be 4–6% lower than if tested using Indolene but that existing EPA fuel economy test procedures do not adequately address this deficit. The result, according to Chrysler, is a 2–3% decrease in fuel economy. Chrysler contends that since no action is currently being taken by EPA to correct the adjustment procedure, the fuel economy penalty must be taken into account by NHTSA in setting future standards.

NHTSA does not agree with Chrysler that the agency must make an adjustment for California Phase II fuel in setting future light truck fuel economy standards. EPA has addressed this issue through allowing the use of Indolene for fuel economy testing.

Section 177

States may voluntarily adopt the more stringent California emissions standards under Section 177 of the Clean Air Act Amendments of 1990. None of the manufacturers providing submissions provided any specific data outlining fuel economy losses for other states adopting the California LEV program. As in the case of California emissions standards, because the impacts of the Section 177 emissions standards are uncertain and the fuel economy impacts for MY 1998 are negligible, NHTSA has not made any adjustment for the impact of Section 177 standards.

B. Other Light Truck Fuel Economy Studies

In 1992, the National Academy of Sciences (NAS) published a report jointly commissioned by the Federal Highway Administration and NHTSA entitled Automotive Fuel Economy—How Far Should We Go? This report included a discussion of ''technically achievable'' fuel economy levels for light trucks for MYs 1996, 2001, and 2006. Additionally, the Department of Energy published a report in January 1994 prepared by its contractor, Energy and Environmental Analysis, Inc. (EEA) entitled Domestic Manufacturers' Light

Truck Fuel Economy Potential to 2005 (Docket No. 94–20–NO1–003).

Both the NAS and the EEA studies have limitations in providing guidance for setting CAFE standards. The NAS study does not completely replicate the new light truck fleet in that its model fleet does not include large vans and utility vehicles. Its use of expensive fuel saving technologies may go beyond what the market will accept; and at the same time, it may not fully recognize the growing demand for more power, accessories, and weight in light trucks. The NAS study also treats the entire light truck fleet together, rather than analyzing individual companies as the agency must in setting standards. It should be noted that the Academy itself stated that its ''technically achievable'' fuel economy estimates should not ''be taken as its recommendation on future fuel economy standards.'' A detailed discussion of the Academy's estimates is contained in the agency's Preliminary Regulatory Evaluation which has been placed in the docket.

The EEA study is more useful in that it discusses the prospects of the domestic manufacturers individually. However, the EEA study has limited application to setting a 1998 MY CAFE standard as it envisions CAFE improvement derived from design and technical improvements that would be difficult to implement by the 1998 model year.

The Department of Transportation Appropriations Act for FY 1995, directed the Department to conduct a study of the unique capabilities, uses, and utility requirements of light trucks to determine if such requirements would result in design constraints that would limit fuel economy improvements. That study is underway and should be completed in time to be considered prior to taking final action for MY 1998.

V. The Need of the United States to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year the Energy Policy and Conservation Act (EPCA) was passed, and rose to 46.4 percent in 1977. Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988, reaching 44.3 percent in 1990 and an estimated 48.2 percent in 1994.

Similarly, the percentage of oil imported from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has since risen to the point where OPEC supplies about half of the nation's imported oil. Imports from OPEC reached 53.6 percent of imports in 1991 and accounted for 47 percent of 1994 imports.

The average cost of crude oil imports jumped from $4.08 per barrel in 1973 to $12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases in the cost of oil occurred in 1979–80, due to unrest in Iran (which eliminated a substantial portion of that country's oil output), and in 1980–81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices generally have fallen. In 1990, petroleum prices were affected by the conflict in the Persian Gulf, and prices for crude oil and petroleum rose and fell in response to Middle East events. In 1994, the average refiner acquisition cost of imported crude oil was $15.51 per barrel, 6 percent below the average 1993 level. The cost of domestic crude oil in 1994 was $15.68, four percent less than the 1993 average.

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 97 percent of the energy consumed in the transportation sector. Despite legislation designed to spur the use of alternatve fuels, gasoline will likely remain the predominant fuel in the transportation sector. Sales of alternative-fueled vehicles are forecast to account for only 3.0 percent of light-duty vehicle sales in 2000. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 to 9.1 million barrels per day in 1991. Domestic crude oil production is expected to drop by 170,000 barrels per day (2.6 percent) in 1995 and an additional 220,000 barrels per day (3.4 percent) in 1996. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between $14 and $22 (1994 dollars) per barrel in the year 2000, and will rise to between $15 and $30 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 3.58 and 6.20 million barrels per day in 2010, with imports rising to between 48 percent and 78 percent of total use. Two-thirds of the projected increase in total petroleum consumption in the United States during the next 20 years will be in the transportation sector. This is in spite of the fact that DOE's projections assume that significant improvements in vehicle fuel efficiency will take place as motor gasoline prices rise.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under the Energy Policy and Conservation Act and the National Environmental Protection Act, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

The increase in market share of light trucks points to the importance of fuel economy for this class of vehicle. Light trucks are less fuel efficient and, on average, are driven more miles over their lifetime than passenger automobiles. In 1991, over half of the energy in the transportation sector was used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. Between 1976 and 1994, the market share for passenger cars decreased from 78 percent to 60 percent of total light-duty vehicle sales, while market share for light trucks rose from 22 percent to 40 percent.

Light trucks meeting the standard proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VI. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 32902(a) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In

making this determination, the agency must consider the four factors of section 32902(f): technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. In addition, for this rulemaking, the agency is constrained by the provision of P.L. 104–50 which states that the agency may not set a standard that ''differs from standards promulgated for such automobiles prior to [November 15, 1995].''

A. Interpretation of ''Feasible''

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted ''feasible'' to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the reports on the 1975 Act provide guidance on the meaning of ''maximum feasible average fuel economy level.''

The Conference Report on the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has traditionally set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980. For MY 1998, NHTSA estimates that Chrysler, Ford, and GM each have more than 20 percent of the light truck market. NHTSA deems this percentage significantly large so as to represent ''industry wide'' effects. Thus, the agency does not plan to set the MY 1998 standard above the ''maximum feasible'' level of any of these manufacturers.

C. Petroleum Consumption

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is difficult to ascertain. The potential savings associated with a MY 1998 standard above 20.7 mpg would be highly uncertain. Depending on the level of the standard, one or more of the three large domestic manufacturers could likely meet the level of the standard only by restricting the sales of its large light trucks (given the short leadtime before MY 1998 begins). If this occurred, consumers might tend to keep their older, less fuel-efficient light trucks in service longer. Also, consumers might purchase still larger trucks that are not subject to CAFE standards.

D. The Proposed MY 1998 Standard

Several manufacturers provided general recommendations for the MY 1998 standard in their responses to the ANPRM. Chrysler did not suggest a fuel economy standard for the year, but did state that the standards should be set at levels that can be achieved under any set of likely scenarios of economic practicability. As noted previously, Chrysler submitted a revised analysis of its CAFE capability too late to be included in this NPRM. However, the agency will fully analyze Chrysler's late submission prior to reaching a final decision for MY 1998. Ford did not suggest any specific CAFE standard for future years, but cautioned against setting high standards. In its May 31, 1995, update, GM stated that NHTSA did not give adequate consideration to the risks of product introduction delays and technology shortfalls in evaluating a manufacturer's product plans for establishing fuel economy standards. GM noted that this lack of consideration is particularly harmful to the manufacturer that is determined to be the ''least capable'' for standards setting. GM also discussed how manufacturers' forecasts of CAFE decline as the actual production date approaches, i.e., the forecast in response to the NPRM is often lower than the forecast in response to the ANPRM for a given model year.

In response to the latter GM comment, NHTSA always bases the final rule on an assessment of the latest manufacturers' forecasts. Earlier projections are of interest for the changes that have occurred in the manufacturers' product plans, but they are not determinative when later information is available.

In regard to the GM argument on NHTSA's consideration of manufacturers' risks and product timing problems, which are addressed in detail in the agency's Preliminary Regulatory Evaluation (PRIA), the NHTSA estimates of each manufacturer's capability have been close to the manufacturer's own estimates for MY's 1990 through 1995, except for GM for MY 1995. Also, Ford and Chrysler have each achieved CAFE performance similar to their estimates, except in the case of Chrysler's mid-model year report values for MYs 1994 and 1995. (This discrepancy may be due to higher than expected sales of the new Chrysler standard pickup which is one of the least fuel-efficient models in the Chrysler fleet.) On average over these six model years, Chrysler has overestimated its final CAFE by 0.2 mpg; Ford's range of estimates averaged from 0.1 mpg too high to 0.4 mpg below the final value; and GM's range of estimates averaged from 0.1 to 0.3 mpg above the final value.

GM also notes that import manufacturers are not constrained, as yet, by the standards because of their model mix that is dominated by small trucks. Because of this, the import manufacturers do not have to employ expensive technologies to meet the standards, and they are able to produce fleets that have a larger share of their vehicles with 4WD. An alternative to this situation is to set class standards

that, for instance, might require different levels of fuel economy performance for specific vehicle types or weight subclasses. While such a system might be feasible were CAFE standards adopted with long lead times, as considered in the ANPRM, it is not feasible in the short lead time available for MY 1998.

Based on its analysis described above and on manufacturers' projections, NHTSA has tentatively concluded that the major domestic manufacturers can achieve the light truck fuel economy levels listed in the following table:

Manufacturer	Approximate market share (percent, based on MY 1994)	CAFE (mpg) MY 1998
GM	33	20.7
Ford	30	20.9
Chrysler	24	21.0

As indicated above, most light truck manufacturers other than GM, Ford and Chrysler are expected to achieve CAFE levels above those companies. Only two or three light truck manufacturers, Range Rover, Volkswagen, and possibly Mercedes-Benz, are expected to have fuel economy levels lower than the major domestic manufacturers. Since these companies have extremely small market shares, NHTSA believes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industry-wide considerations into account, as required by statute.

As the above table demonstrates, NHTSA has tentatively concluded that GM is the least capable manufacturer with a substantial share of sales for MY 1998. NHTSA has also tentatively concluded that 20.7 mpg is the maximum feasible standard for MY 1998. For the reasons discussed below, the agency believes this level would balance the potential petroleum savings associated with a higher standard against the difficulties of manufacturers facing a potentially higher standard.

The agency believes that a 20.7 mpg light truck CAFE standard for MY 1998 would make a positive contribution to petroleum conservation by promoting continued production of fuel efficient vehicles. Moreover, it would encourage GM, which has a large market share, to achieve its projected CAFE level.

The agency believes that a 20.7 mpg standard would not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The current product plans submitted by Ford, GM and Chrysler indicate that they expect to achieve a MY 1998 CAFE level at or above 20.7 mpg. Therefore, they will not have to make any changes in their product plans to achieve the level of the standard.

NHTSA believes that a higher standard than 20.7 mpg for MY 1998 could result in serious economic difficulties for GM. Product restrictions could be required to achieve a CAFE higher than 20.7 mpg. Given leadtime constraints, NHTSA believes that the first potential fuel-efficiency actions that GM or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed in other notices, however, the agency does not believe that marketing actions can be relied upon to significantly improve a manufacturer's CAFE. See, e.g., MY 1993–94 light truck CAFE final rule (56 FR 13775, April 4, 1991). If such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in product restrictions to achieve the level of a higher CAFE standard. Such product restrictions could result in adverse economic consequences for GM, its employees and the economy as a whole and limit consumer choice, especially with regard to the load-carrying needs of light truck purchasers.

As indicated above, while NHTSA has tentatively concluded that GM is the least capable manufacturer with a substantial share of sales, the agency believes that GM's capability is not significantly below that of Ford or Chrysler. These three companies combined will sell over 85 percent of all new light trucks sold in the U.S. in MY 1998. Therefore, even if the agency were to set a standard above GM's capability, the standard could not be much above 20.7 mpg and still remain within the capability of the overwhelming majority of the industry.

NHTSA believes that a 20.7 mpg standard would balance the potentially serious adverse economic consequences for GM that could result from a higher standard with the potential for continued petroleum savings. The agency has tentatively concluded, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the potential harm to that company and the economy as a whole.

A number of organizations and individuals have requested that NHTSA evaluate the safety effects of its CAFE decisions. An analysis of the extent to which significantly higher light truck CAFE standards could affect safety is more complex than for passenger car standards, since purchasers would have many more options for substitution (e.g., different kinds of light trucks, trucks with a high enough GVWR that they are not subject to CAFE standards, etc.) The agency notes that since light trucks are generally significantly larger and heavier than passenger cars, the safety effects of a particular weight change, if they exist, would likely be smaller than for cars.

The available evidence indicates that a MY 1998 standard of 20.7 mpg would not have any impact on safety. NHTSA notes that, in setting the light truck CAFE standards for recent model years, the agency has not included in its analyses of manufacturer capabilities any product plan actions that would significantly affect the weight, size or cost of the vehicles the manufacturers planned to offer. The agency also notes that the levels of the light truck CAFE standards have not varied significantly for more than a decade. The light truck CAFE standards for MY 1987–89 and MY 1994 were set at 20.5 mpg, and, as far back as MY 1984, the standard was 20.0 mpg.

NHTSA therefore believes that the size and weight of current and planned light trucks are not significantly different from what would have occurred in the absence of CAFE standards. Moreover, as discussed above, Ford, GM and Chrysler do not need to change their product plans to meet or exceed the level of the proposed MY 1998 light truck CAFE standard. Thus, a 20.7 mpg light truck CAFE standard for MY 1998 would not lead to significant changes in light truck size or weight, or shifts toward less safe vehicles. The agency, therefore, has tentatively concluded that it would not likely have any impact on safety.

This proposed rule would not have any retroactive effect. Under section 32919 of Chapter 329 of Title 49, (49 U.S.C. 32919), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Under section 32919(b) of Chapter 329 of Title 49 (49 U.S.C. 32919(b)), a state may not require fuel economy labels on vehicles covered by section 32908 of Chapter 329 of Title 49 (49 U.S.C. 32908) which are not identical to the Federal standard. Section 32919 does not apply to vehicles procured for the State's use. Section 32909 of Chapter 329 of Title 49 (49 U.S.C. 32909) sets forth a procedure for judicial review of final rules establishing, amending or revoking

Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

VII. Impact Analyses

A. Economic Impacts

The agency has considered the economic implications of the proposed standard and determined that the proposal is significant within the meaning of Executive Order 12866 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Preliminary Regulatory Evaluation (PRE), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the proposed rule would be classified as a ''small business'' under the Regulatory Flexibility Act.

C. Impact of 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 proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. Department of Energy Review

In accordance with section 32902(i) of Chapter 329 of Title 49, the agency submitted this proposal to the Department of Energy (DOE) for review. The Department has concurred in the level proposed for MY 1998.

VIII. Comments

NHTSA is providing a comment period, ending on March 4, 1996 for interested parties to present data and views on the issues raised in this notice and the accompanying PRE, as well as any other issues commenters believe are relevant to this proceeding. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 would be amended as follows:

1. The authority citation for part 533 would be amended to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50

2. Section 533.5(a) would be amended by revising Table IV to read as follows:

§ 533.5 Requirements.

* * * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7

* * * * *

Issued on: December 26, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–4 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

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

Office of the Secretary

Secretary of Agriculture's Special Cotton Quota Announcement Number 9

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,624,810 kilograms (96,176,321 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 9, chapter 99, subchapter III, subheading 9903.52.09 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on November 1, 1995, and applies to upland cotton purchased not later than January 29, 1996 (90 days from the date the quota was established) and entered into the United States not later than April 28, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32-inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended October 26, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1995 through September 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on December 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 96–16 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 10

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,624,810 kilograms (96,176,321 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 10, chapter 99, subchapter III, subheading 9903.52.10 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on November 8, 1995, and applies to upland cotton purchased not later than February 5, 1996 (90 days from the date the quota was established) and entered into the United States not later than May 5, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32-inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 2, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1995 through September 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on December 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 96–14 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 11

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,624,810 kilograms (96,176,321 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 11, chapter 99, subchapter III, subheading 9903.52.11 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on November 15, 1995, and applies to upland cotton purchased not later than February 12, 1996 (90 days from the

date the quota was established) and entered into the United States not later than May 12, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 9, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1995 through September 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on December 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 96–18 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 12

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,624,810 kilograms (96,176,321 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 12, chapter 99, subchapter III, subheading 9903.52.12 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on November 22, 1995, and applies to upland cotton purchased not later than February 19, 1996 (90 days from the date the quota was established) and entered into the United States not later than May 19, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 16, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1995 through September 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on December 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 96–15 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 13

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,624,810 kilograms (96,176,321 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 13, chapter 99, subchapter III, subheading 9903.52.13 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on November 29, 1995, and applies to upland cotton purchased not later than February 26, 1996 (90 days from the date the quota was established) and entered into the United States not later than May 26, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 23, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1995 through September 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on December 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 96–00017 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–05–P

Privacy Act of 1974: Notice of a Computer Matching Program for Federal Salary Offset

AGENCY: Farm Service Agency (FSA) and the Rural Housing Service (RHS), formerly the Farmers Home Administration (FmHA); Federal Crop Insurance Corporation (FCIC); Commodity Credit Corporation (CCC); and Office of the Chief Financial Officer (OCFO)/National Finance Center, (Agencies of the United States Department of Agriculture (USDA). Throughout this notice referred to as USDA).

ACTION: Notice of computer matching program between United States Department of Agriculture (USDA) and the United States Postal Service (USPS).

SUMMARY: USDA is giving notice that it intends to conduct a computer matching program with the USPS in order to identify USPS employees who owe certain types of delinquent debts to the United States Government under various program administered by the above USDA agencies on account of loans, fees, overpayments, or entitlements.

DATES: Comment must be received February 2, 1996 to be considered. Unless comments are received which result in a contrary determination, the matching program covered by this Notice will begin no sooner than February 12, 1996.

ADDRESSES: Comments should be addressed to Reynaldo Gonzalez, USDA/OCFO, 14th and Independence Avenue, Room 3313, South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to a subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. Section 552a), USDA and USPS have concluded an agreement to conduct a computer matching program. The purpose of the match is to exchange personal data between the agencies for collection of delinquent debts from defaulters of obligations held by USDA. The match will yield the identity and location of the debtors who are also employees of USPS so that USDA can pursue recoupment of the debts by voluntary payment or by salary offset procedure. Computer matching appears to be the most efficient and effective manner to accomplish this task with the least amount of intrusion into the personal privacy of the individuals concerned.

A copy of the computer matching agreement between USDA and USPS is available to the public upon request. Requests should be submitted to the Debt Collection Coordinator, USDA, 14th and Independence Avenue, SW, Room 3313, South Building, Washington, D.C. 20250.

This notice is being published as required by Section (e)(12) of the Privacy Act of 1994 (5 U.S.C. 552a(e)(12)), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503).

The following information is provided as required by paragraph 5b of Appendix I to Office of Management and Budget Circular A–130, dated July 15, 1994.

1. *Participating agencies.* The recipient agency is USPS. The source agency is USDA.

2. *Beginning and ending dates.* The matching program will continue in effect no longer than 18 months. If within three months of the expiration date, the Data Integrity Boards of both USDA and the USPS find that the matching program can be conducted without change and both USDA and the USPS certify that the matching program has been conducted in compliance with the matching agreement, the matching program may be extended for one additional year.

3. *Purpose of the match.* The purpose of the match is to identify and locate USPS employees receiving any Federal salary or benefit payments who are delinquent in their repayment of debts owed to the United States government under the programs administered by the USDA, to permit the USDA to pursue and collect the debt by voluntary repayments or salary offset procedures.

The names of USPS employees identified through the matching program will be removed from lists of delinquent debts being referred to the Internal Revenue Service (IRS) for collection from Federal income tax refunds. This action is required to conform to an IRS requirement for the Income Tax Refund Offset Program.

4. *Description of the match.* The subject matching program will involve several steps. USDA will provide USPS one or more magnetic computer tapes of claims submitted by USDA agencies. By computer, USPS will compare that information with its payroll file, establishing matched individuals on the basis of Social Security Numbers (SSN's). For each matched individual, USPS will provide to USDA the individual's name, SSN, home address, work location and information concerning the individual's employment status as permanent or temporary.

The respective agencies will verify identity and debtor status of the matched individuals by manually comparing the list of matched individuals to their records of the debts, by conducting independent inquiries when necessary to resolve questionable identities, and by verifying that the debt is still delinquent.

In addition to verifying debtor identity and the status of the debt, prior to USDA taking any steps to effect involuntary offset of USPS employee salaries, USDA agencies will provide debtors with a 30-day written notice stating the amount of the debt and that the debtor may repay it voluntarily. Debts not repaid voluntarily would be referred to USPS for involuntary salary offset. Individuals verified as owing delinquent debts to USDA will be afforded all applicable due process rights contained in the Debt Collection Act.

5. *Legal authorities.* This matching program will be conducted under the following authorities:

(a) The Debt Collection Act of 1982 (5 U.S.C. 5514), which gives Federal agencies the authority to offset the salaries of Federal and USPS employees who are delinquent on debts owed to the Federal Government.

(b) Office of Personnel Management (OPM) regulations, 5 CFR Part 550, Subpart K (Collection by Offset from Indebted Government Employees), Sections 5550.1101–1108, which set the standards for Federal agency rules implementing the Debt Collection Act; and

(c) USDA regulations at 7 CFR Part 3, Subpart C, which implement 5 U.S.C. 5514 and OPM regulations, and which authorize USDA agencies to issue regulations governing debt collection by salary offset (7 CFR 3.68).

6. *Categories of individuals involved.* Delinquent debtors who have received benefits from USDA program agencies.

7. *Systems of Records and Estimation of Number of Records Involved.*

(a) The USPS will provide extracts from its Privacy Act System of Records USP 050.020, Finance Records-Payroll System, containing payroll records on approximately 700,000 current USPS employees. Disclosure will be made under routine use 24 of that system, a full description of which was last published in 57 FR 57515, dated December 4, 1992.

(b) The USDA will provide extracts from its (1) Applicant/Borrower or Grantee File (USDA/FmHA–1), containing records on approximately 762,000 debtors (approximately 88,000 of the 762,000 records will be sent for the match), a full description of which was last published in the Federal Register at 53 FR 5205 on February 1988 (routine use number 2); (2) Accounts

Receivable (USDA/FCIC–1), containing records on approximately 3,600 debtors (approximately 3,600 will be sent for the match), a full description of which was last published in the Federal Register at 53 FR 4047 on February 11, 1988 (routine use number 9); (3) Claims Data Base (Automated) (USDA/ASCS–28), containing records on approximately 25,000 debtors, (approximately 25,000 will be sent for the match) a full description of which was last published in the Federal Register at 53 FR 12175 on April 13, 1988 (routine use number 9); and (4) Administrative Billings and Collections (USDA/OFM–3), containing records on approximately 46,500 debtors (approximately 4,500 will be sent for the match) a full description of which was last published in the Federal Register at 54 FR 25883 on June 20, 1989 (routine use number 6).

8. *Individual notice and opportunity to contest.* USDA will provide to matched individuals due process consisting of USDA's verification of debt; 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy of the USDA's documentation of the debt; provision for debtor to seek USDA's review of the debt and opportunity for the individual to enter into a written agreement satisfactory to USDA for repayment. Prior to use of the salary offset provision, an individual will be afforded the opportunity for a hearing concerning the amount or existence of the debt or the offset repayment schedule. The hearing will be before an individual not under the supervision or control of the Secretary, USDA. Unless the individual notifies USDA otherwise within 30 days from the date of the notice, USDA will conclude that the date provided to the individual is correct and will take the necessary action to recoup the debt.

9. *Inclusive date of the matching program.* This computer matching program is subject to review by the Office of Management and Budget (OMB) and Congress. If no objections are raised by either and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments having been received that would result in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data on the later of 30 days after the date of this published notice or 40 days after notice to OMB and Congress, at a mutually agreeable time. Exchange of data will be repeated on an annual basis, unless OMB or the Treasury Department requests a match twice a year. Under no circumstances will the matching program be implemented before the respective 30 and 40-day notice periods have elapsed, as this time period cannot be waived. By agreement between USDA and USPS, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months. The matching program may be terminated by written notification from either participating agency to the other.

10. *Address for receipt of public comments or inquiries.* Reynaldo Gonzalez, USDA/OCFO, 14th and Independence Avenue, SW, Room 3313, South Building, Washington, DC 20250. Telephone (202) 720–1168.

Signed at Washington, DC on December 21, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–00021 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–KS–M

Agricultural Marketing Service

[Docket No. FV–96–352]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to a currently approved information collection in support of the Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930 (PACA)(7 U.S.C. 499a–499s).

DATES: Comments on this notice must be received by March 4, 1996.

FOR INFORMATION OR COMMENTS CONTACT: 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 the use of appropriate technology. Comments may be sent to Michael A. Clancy, Head, License and Program Review Section, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, (202)720–2814.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA impresses a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid. An amendment to the PACA, enacted into law on November 15, 1995, reduced the record keeping and reporting burden imposed under the trust provision by removing the requirement that trust claimants file notices of intent to preserve trust benefits with the Department of Agriculture. The burden is, therefore being revised to remove the record keeping and time requirements that were necessary for the filing of trust claims. This action will decrease the time requirement by 20,741 total hours and the paperwork burden by 124,445 total annual responses.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for one (1) year unless withdrawn by USDA for valid reasons, and must be renewed annually. Those

who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trading practices. We estimate the paperwork and time burden as follows:

Form FV–211 Application for License: average of 15 minutes per application per response.

Form FV–231 Application for Renewal of License: average of 5 minutes per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: average of 5 minutes per notice per response.

Regulations Section 46.20—Records Reflecting Lot Numbers: average of 8.25 hours with approximately 1,000 record keepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: average of 15 minutes per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: average of 20 hours with approximately 2,000 record keepers.

Estimate of Burden: The total public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 15,550

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 49,448 hours

Copies of this information collection can be obtained from Michael A. Clancy, Head, License and Program Review Section, PACA Branch, at (202) 720–2814.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection for information to:

Michael A. Clancy, Head, License and Program Review Section, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2715–South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

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.

Dated: December 26, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–00025 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

Collection Requirements Submitted for Public Comment and Recommendations: Study of Direct Certification

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the Study of Direct Certification.

DATES: Comments on this notice must be received by March 4, 1996.

ADDRESSES: 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305-2117.

SUPPLEMENTARY INFORMATION:

Title: Study of Direct Certification.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: Direct certification is a simplified method used to certify National School Lunch Program (NSLP) eligibility for children who reside in households which participate in the Food Stamp Program (FSP) or in Aid to Families with Dependent Children (AFDC). This study will estimate the costs and administrative savings of using direct certification as an alternate means of approving automatically eligible children for free school meals under the terms and conditions of Section 9(b)(6) of the National School Lunch Act, 42 U.S.C. 1758(b)(6). It will also assess the affect that direct certification has on the certification and participation rates of children eligible for free meals; provide descriptive information on the use of direct certification; and identify factors that contribute to a successful direct certification program.

The study's data collection component is comprised of five telephone-interview surveys:(1) interviews with all the state NSLP agencies in the contiguous forty-eight states to ascertain the status of direct certification in each state; (2) screening interviews with 1,000 randomly chosen school food authorities (SFAs) to determine if they use direct certification; (3) interviews with the SFAs identified as utilizing direct certification; (4) interviews with 150 schools, randomly selected from schools in the direct certification SFAs, on their experiences with direct certification; and (5) interviews with a purposively selected sample of the Aid to Families with Dependent Children/Food Stamp (AFDC/FS) offices that work with the direct certification SFAs on their experiences with direct certification. All survey respondents will be administered one data collection instrument, except the SFAs using direct certification. They will be administered two.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 50 minutes for the NSLP state agencies, 20 minutes for the SFAs in the screening interview, 120 minutes for the direct certification SFAs, 120 minutes for the direct certification schools, and 30 minutes for the AFDC/FS offices.

Respondents: For each survey, the entity providing the data will be asked to have the individual most knowledgeable of direct certification

operations serve as the interview respondent.

Estimated Number of Respondents: There will be 48 respondents for the NSLP state agency survey, about 1,000 for the SFA screening survey, an estimated 150 for the direct certification SFA survey, about 150 for the direct certification school survey, and about 25 for the AFDC/FS office survey.

Estimated Number of Responses per Respondent: One, except for the direct certification SFAs, for which it will be two.

Estimated Total Annual Burden on Respondents: 986 hours. Copies of this information collection can be obtained from Matthew Sinn, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: December 19, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–00022 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–30–U

Foreign Agricultural Service

Briefing on Status of Preparations for the World Food Summit

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that there will be a meeting to inform interested parties on the outcome of the January meeting of the Food and Agriculture Organization's Committee on World Food Security (CFS). The primary item on the agenda for the CFS is review of the draft policy statement and plan of action for the World Food Summit. The Summit is scheduled to be convened in Rome, Italy, in November, 1996.

DATES: The meeting will be held Wednesday, February 7, 1996 from 2–4 p.m. at the U.S. Department of Agriculture, Room 3107S South Building, 14th and Independence Aves., SW., in Washington, DC.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Buzz Guroff, National Secretary for the World Food Summit, Foreign Agricultural Service, Room 3008 South Building, U.S. Department of Agriculture, 14th and Independence Aves., SW., Washington, DC 20250.

Signed at Washington, DC, December 26, 1995.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 96–00013 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–106–000]

Columbia Gas Transmission Corporation and Texas Eastern Transmission Corporation; Notice of Application

December 27, 1995.

Take notice that on December 15, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, and Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056–5310, jointly filed in Docket No. CP96–106–000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations for permission and approval to abandon transportation and exchange services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The transportation and exchange services for which abandonment is sought, were authorized by the Commission in separate orders issued August 8, 1978 (Docket No. CP78–162, 4 FERC ¶ 61,123 [1978]) and March 21, 1979 (Docket No. CP79–86, 6 FERC ¶ 61,247 [1979]), and involve services made pursuant to Texas Eastern Rate Schedule Nos. X–92 and X–95 and Columbia Rate Schedule No. X–82.

Columbia and Texas Eastern state that service under Rate Schedule Nos. X–82 and X–92 last occurred in 1983, while service under Rate Schedule No. X–95 was last performed prior to 1985.

Columbia and Texas Eastern also state that the contracts underlying the transportation and exchange services were terminated in an order issued September 13, 1993 by the United States Bankruptcy Court for the District of Delaware in Case Nos. 91–803 and 91–804.

Columbia and Texas Eastern submit that the proposed abandonment is required by the present and future public convenience and necessity, as it will eliminate transportation services no longer needed and will permit these companies to cancel their corresponding rate schedules in Volume No. II of their FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 17, 1996, file with the Federal Energy Regulatory Commission at 888 First Street, N.E., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia or Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–00028 Filed 1–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–116–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

December 27, 1995.

Take notice that on December 21, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed a request

with the Commission in Docket No. CP96–116–000 pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate certain existing facilities in Arkansas authorized in blanket certificate issued in CP82–384–000 and amended CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to operate one 2-inch tap and 4-inch U-Shape meter station located on NGT's Line AC as jurisdictional facilities to provide jurisdictional service, including transportation services under Subpart G of Part 284 of the Commission's Regulations. NGT states the facilities were initially constructed solely to provide services authorized under Section 311 of the NGA and Subpart B of the Commission's Regulations. The estimated volumes to be delivered through these facilities are approximately 300,000 MMBtu annually and 1,000 MMBtu on a peak day. The cost of construction was $8,375 which was reimbursed by ARKLA, a distribution division of NorAm Energy Corporation.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–00027 Filed 1–2–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee. Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Basic Energy Sciences Advisory Committee.

DATES: Monday, February 5, 1996, 9:00 a.m. to 5:00 p.m.; and Tuesday, February 6, 1996, 9:00 a.m. to 5:00 p.m.

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia M. Dehmer, Basic Energy Sciences Advisory Committee, U.S. Department of Energy, ER–10, GTN, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301)-903–3081

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda

Monday, February 5, 1996, and Tuesday, February 6, 1996:

Introduction of Patricia Dehmer and Committee Members

Tasks for BESAC

Perspectives on the Office of Energy Research

Perspectives on the Office of Basic Energy Sciences.

Report on the DOE Accelerator Study.

Report on the Value of Basic Research Study.

Report on BESAC Neutron Subpanels: Reactors, Spallation, and Technical Issues for Spallation Sources.

BESAC Discussion of Panel Reports and Recommendations.

Public Comment (10 minute rule).

Public Participation

The two-day meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Patricia Dehmer at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on December 28, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory, Committee Management Officer.

[FR Doc. 96–00049 Filed 1–2–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5399–7]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer to EPA contractors, technical and financial confidential business information (CBI) collected from landfills, incinerators and centralized waste treatment facilities. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the landfill, incinerator, and centralized waste treatment industries. The information being transferred was collected under the authority of Section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due January 16, 1996.

ADDRESSES: Comments may be sent to Samantha Hopkins, Engineering and Analysis Division (4303), Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Samantha Hopkins at the above address or at (202) 260–7149.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor Science Applications International Corporation (SAIC) of Hackensack, New Jersey (and subcontractors) information, including confidential business information (CBI), concerning the landfill, incinerator, and centralized waste treatment industries (initially grouped together as the ''hazardous waste treatment industry'') collected under the authority of the Clean Water Act, Section 308.

The information transferred included: Questionnaire data collected during a two phase survey of the landfill and incinerator industry; the first phase consisted of a screener survey questionnaire which was conducted in 1993 (OMB No. 2040–0162); the second phase was a more detailed questionnaire that was sent in 1994 to a selected sample identified through the responses to the questionnaire (OMB No. 2040–0167); and, Questionnaire data collected

from a detailed questionnaire that was sent to 1991 to all known centralized waste treatment facilities (OMB No. 2740–0151). EPA also transferred site visit and field sampling data collected during 1993 through 1995 for the landfill and incinerator industry and collected during 1991 through 1994 for the centralized waste treatment industry. EPA determined that this transfer was necessary to enable the contractors and subcontractors to perform their work under EPA contract Nos. 68–01–6947, 68–03–3509, and 68–C1–0006 and related subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the centralized waste treatment, landfill, and incinerator industries. Notice to this effect was provided to the affected companies at the time the data was collected or through a Federal Register notice.

Today, EPA is giving notice that it has entered into a new contract, Contract 68–C5–0041 with Science Applications International Incorporated (SAIC) of Hackensack, New Jersey to develop effluent limitations guidelines and standards for the landfill and incinerator industry. The effective date of the new contract is November 2, 1995. SAIC will provide technical support such as completion of the public docket for the proposed rulemaking and work on the technical development documents. The contractor shall also provide support on post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting the assembly of the rulemaking record for the final rule.

Today, EPA is also giving notice that it has entered into a new contract, Contract 68–C5–0040 with Science Applications International Incorporated (SAIC) of Hackensack New Jersey to develop effluent limitations guidelines and standards for the centralized waste treatment industry. The effective date of the new contract is November 2, 1995. SAIC will provide technical support such as post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting the assembly of the rulemaking record for the final rule.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to SAIC. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract Nos. 68–C5–0041 and 68–C5–0040.

Anyone wishing to comment on the above matters must submit comments to the address given above by [Insert date 10 days from date of publication].

Dated December 12, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 96–00033 Filed 1–2–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and a request for public comments.

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 of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 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 OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on:

(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) 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;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 4, 1996.

ADDRESSES: Comments, which should refer to the OMB control number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the 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: Robert T. Maahs, Supervisory Financial Analyst (202/872-4935) or Tina Robertson, Supervisory Financial Analyst (202/452-2949). A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

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. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

General Information

Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and

regulation of all bank holding companies. The FR Y-9 and FR Y-11 series of reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from the Y series reports, are used to detect emerging financial problems, to review performance for pre-inspection analysis, to evaluate bank holding company mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall analytical effort.

Proposal to approve under OMB delegated authority the revision of the following reports:

1. Report title: Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y-9C
OMB control number: 7100-0128
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 183,927
Estimated average hours per response: Range from 5 to 1,250 hours
Number of respondents: 1,354
Small businesses are affected.

General description of report: The information collection is mandatory [12 U.S.C. 1844(b) and (c)] and [12 CFR 225.5(b)]. Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Data reported on the FR Y-9C, Schedule HC-H, Column A, requiring information on ''assets past due 30 through 89 days and still accruing'' and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act [5 U.S.C. 552(b)(8)].

The FR Y-9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y-9C. The following bank holding companies are exempt from filing the FR Y-9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K.

The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

The Federal Reserve proposes the following revisions to the FR Y-9C that would be effective with the March 31, 1996 reporting date. Most of the proposed new items are needed to maintain consistency with comparable items recently proposed or previously added to the commercial bank Reports of Condition and Income (Call Report).

A. REVISIONS RELATED TO CONSISTENT REPORTING WITH THE CALL REPORT

Schedule HC, Balance Sheet

(1) Revise the reporting requirements for item 17, ''Other borrowed money with original maturity of one year or less,'' and item 18, ''Other borrowed money with original maturity of more than one year,'' to collect information based on *remaining* maturity instead of *original* maturity as currently reported. This change in reporting will also require a revision to line item 5 of Schedule HC-D, ''Interest Sensitivity,'' to *exclude* the portion of long-term debt reported in Schedule HC, item 18. Such reporting will no longer be applicable because of the revisions to reporting ''other borrowed money.''

Schedule HC-B, Part I, Loans and Lease Financing Receivables

(1) Add a line item to report the amount of bankers acceptances of other banks that are included in loans to depository institutions.

(2) Add a memorandum item to report the amount of commercial paper included in loans.

Schedule HC-C, Deposit Liabilities in Domestic Offices

(1) Add two memorandum items to report:

(a) brokered deposits less than $100,000 with a remaining maturity of one year or less, and

(b) brokered deposits less than $100,000 with a remaining maturity of more than one year.

(2) Add a memorandum item to report the amount of time deposits greater than $100,000 with a remaining maturity of one year or less.

(3) Add a memorandum item to report the amount of foreign office time deposits with a remaining maturity of one year or less.

Schedule HC-F, Off-Balance-Sheet Items

(1) Add two line items to report the outstanding amount of small business obligations sold with recourse and the amount of recourse retained.

Schedule HI, Income Statement

(1) Combine the portion of item 5(c), ''Trading gains (losses) and fees from foreign exchange'' with item 5(d), ''Other gains (losses) and fees from trading assets and liabilities,'' into one line item.

(2) Add a line item to report ''other gains (losses) from foreign transactions,'' which is currently included in line 5(c).

(3) Delete memorandum item 3, ''estimated foreign tax credits (included in applicable income taxes, item 9 and 12).''

Schedule HI-B, Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses

(1) Add a line item to report the amount of credit losses on off-balance-sheet derivative contracts.

B. OTHER FR Y-9C REVISIONS

Schedule HC-A, Securities

(1) Move the footnote disclosure on page 21, ''Net unrealized losses on equity securities with readily determinable fair values reported in Schedule HC-A, items 4.b and 5.b (net of tax effect),'' into the body of Schedule HC-A.

Schedule HC-G, Memoranda

Add two line items to report:

(a) The amount of excess servicing fees receivable (other than excess residential mortgage servicing fees receivable) and

(b) The amount of excess servicing fees receivable that represent a credit enhancement for securitized receivables.

Schedule HC-I, Risk-Based Capital

(1) Combine line items 10 and 11 on Schedule HC-I, Part II, into one line item and change the caption to ''credit equivalent amount of off-balance-sheet derivative contracts'' (an identical caption change will occur on Schedule HC-J, Part II, line 6).

(2) Delete memorandum item 6(a) of Part I, discounted value of purchased mortgage servicing rights.

2. Report title: Parent Company Only Financial Statements for Large Bank Holding Companies
Agency form number: FR Y-9LP
OMB control number: 7100-0128
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 29,562
Estimated average hours per response: Range from 2.0 to 13.5 hours
Number of respondents: 1,646
Small businesses are affected.

General description of report: The information collection is mandatory [12 U.S.C. 1844(b) and (c)] and [12 CFR 225.5(b)]. Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form.

The FR Y-9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y-9C. In addition, for tiered bank holding companies, a separate FR Y-9LP must be filed for each lower tier bank holding company if the top tier bank holding company files the FR Y-9C. The following bank holding companies are exempt from filing the FR Y-9LP, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K.

The Federal Reserve proposes the following revisions to the FR Y-9LP. The proposed revisions are needed to maintain consistency with comparable items on the FR Y-9C, and would be effective with the March 31, 1996 reporting date.

Schedule PC, Parent Company Only Balance Sheet

Revise the reporting requirements for line item 13, ''Borrowings with an original maturity of one year or less,'' and line item 14, ''Other borrowed funds with an original maturity of greater than one year,'' to collect information based on *remaining* maturity instead of *original* maturity as currently reported.

Schedule PC-B, Memoranda

Revise the reporting requirements of line item 2, ''Amount of borrowings included in Schedule PC, items 14 through 16 and item 18 that is scheduled to mature with one year (exclude short-term debt),'' to *exclude* line item 14 because line item 14 of Schedule PC will be based on remaining maturity and will no longer be applicable to this line item.

3. Report title: Quarterly Financial Statements of Nonbank Subsidiaries of Bank Holding Companies
Agency form number: FR Y-11Q
OMB control number: 7100-0244
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 6,696
Estimated average hours per response: Range from 3.0 to 8.0 hours
Number of respondents: 270
Small businesses are affected.

General description of report: The information collection is mandatory [12 U.S.C. 1844(b) and (c)] and [12 CFR 225.5(b)]. Confidential treatment is not routinely given to most of the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y-11Q, memorandum item 7.a ''loans and leases past due 30 through 89 days'' and FR Y-11Q, memorandum item 7.d, ''loans and leases restructured and included in past due and nonaccrual loans'' are confidential pursuant to Section (b)(8) of the Freedom of Information Act [5 U.S.C. 552(b)(8)].

The FR Y-11Q is filed quarterly by the top tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top-tier bank holding company's consolidated Tier 1 capital, or where the nonbank subsidiary's total operating revenue equals 5 percent or more of the top-tier bank holding company's consolidated total operating revenue. The report consists of a balance sheet, income statement, off-balance-sheet items, information on changes in equity capital, and a memoranda section.

The Federal Reserve proposes the following revisions to the FR Y-11Q to be effective with the March 31, 1996 reporting date:

Balance Sheet

(1) Delete line items 11 and 18, ''Balances with nonrelated institutions.''

(2) Revise the reporting requirements of line item 15, ''Borrowing with original maturity of one year or less (including federal funds purchased),'' and line item 16, ''Borrowing with an original maturity of more than one year (including subordinated debt),'' to collect information based on *remaining* maturity instead of *original* maturity as currently reported.

(3) Delete memorandum item 13, ''Borrowings scheduled to mature in less than one year.''

Income Statement

Add a line item to report the amount of equity in the undistributed income (losses) of subsidiaries.

4. Report title: Annual Financial Statements of Nonbank Subsidiaries
Agency form number: FR Y-11I
OMB control number: 7100-0244
Frequency: Annual
Reporters: Bank holding companies
Annual reporting hours: 13,216
Estimated average hours per response: Range from .4 to 8.0 hours
Number of respondents: 4,130
Small businesses are affected.

General description of report: The information collection is mandatory [12 U.S.C. 1844(b) and (c)] and [12 CFR 225.5(b)]. Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y-11I, Schedule A, item 7.a, ''loans and leases past due 30 through 89 days '' and FR Y-11I, Schedule A, item 7.d, ''loans and leases restructured and included in past due and nonaccrual loans'' are confidential pursuant to Section (b)(8) of the Freedom of Information Act [5 U.S.C. 552(b)(8)].

The FR Y-11I is filed annually by the top tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y-11Q. The FR Y-11I report consists of similar balance sheet, income statement, off-balance-sheet, and change in equity capital information that is included on the FR Y-11Q. In addition, the FR Y-11I also includes a loan schedule to be submitted only by respondents engaged in credit extending activities.

The Federal Reserve proposes the following revisions to the FR Y-11I to be effective with the December 31, 1996 reporting date:

Balance Sheet

(1) Delete line items 11 and 18, ''Balances with nonrelated institutions.''

(2) Revise the reporting requirements of line item 15, ''Borrowing with original maturity of one year or less (including federal funds purchased),'' and line item 16, ''Borrowing with an original maturity of more than one year (including subordinated debt),'' to collect information based on *remaining* maturity instead of *original* maturity as currently reported.

Income Statement

Add a line item to report the amount of equity in the undistributed income (losses) of subsidiaries.

REGULATORY FLEXIBILITY ACT ANALYSIS

The Board certifies that the above bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's

financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00030 Filed 1-2-96; 8:45AM]

Billing Code 6210-01-F

Arthur C. Johnson, 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 19, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Arthur C. Johnson, Grand Rapids, Michigan; to acquire an additional 2.38 percent, for a total of 26.59 percent, of the voting shares of United Community Financial Corporation, Wayland, Michigan, and thereby indirectly acquire United Bank of Michigan, Grand Rapids, Michigan.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Fred and Jayne Esgar, Wiley, Colorado; to acquire 21.8 percent; Dave Esgar and Julie Phillips Esgar, Wiley, Colorado, to acquire 9.8 percent; Dave Esgar, for the benefit of Shea Esgar, a minor, Wiley, Colorado, to acquire 4.4 percent; Dave Esgar, for the benefit of Leah Esgar, a minor, Wiley, Colorado, to acquire 4.4 percent; Dave Esgar, for the benefit of Zach Esgar, a minor, Wiley, Colorado, to acquire 4.4 percent of the voting shares of Panhandle Bancshares, Inc., Panhandle, Texas, and thereby indirectly acquire The First National Bank of the Panhandle, Panhandle, Texas.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00008 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

Fidelity Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it 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 or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fidelity Company, Dyersville, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Valley State Bank, Guttenberg, Iowa, in organization.

2. Hamburg Financial, Inc., Hamburg, Iowa; to acquire 100 percent of the voting shares of Thurman State Corporation, Lincoln, Nebraska, and thereby indirectly acquire United National Bank of Iowa, Sidney, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Marine Bancorp, Inc., Springfield, Illinois (formerly Wayne City Bancorp, Inc., Springfield, Illinois); to acquire 100 percent of the voting shares of Marine Bank Springfield, Springfield, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Henrietta Bancshares, Inc., Henrietta, Texas, and thereby indirectly acquire The First National Bank of Henrietta, Henrietta, Texas, and First State Bank of Hubbard, Hubbard, Texas.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Victoria Bankshares, Inc., Victoria, Texas, and thereby indirectly acquire Victoria Bank & Trust Company, Victoria, Texas.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00006 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

J.G.D.B. y Cia. S. en C., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it 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 or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than January 31, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. J.G.D.B. y Cia. S. en C. (formerly known as Jaime Gilinski y Cia. S. en C.), PBZ Ltda. y Cia. S. en C., and J.G.D.B. Limitada, all of Santa Fe de Bogota, Colombia, and Bloice Enterprises Corp., Colonel County Inc., Caprice Maritime Limited, Aileen International Co., Inc., Early Haven Investments Corp., Feldome Worldwide Corp., Foye Investments Inc., Garbay Isle Investments Inc., Jacklyn Finance Co. Ltd., and Swain Finance Co. Inc., all of Tortola, British Virgin Islands (collectively, Companies), and Bancol y Cia. S. en C. (Bancol), Santa Fe de Bogota, Colombia, to become bank holding companies and to retain, indirectly, all the voting securities of Eagle National Holding Company, and thereby retain 99.2 percent of the voting securities of Eagle National Bank of Miami, N.A., both of Miami, Florida. Companies, in the aggregate, own, directly or indirectly, all the voting securities of Bancol, which controls the power to vote 74.9 percent of the voting securities of Banco de Colombia, S.A., Santa Fe de Bogota, Colombia. In addition, Banco de Colombia, S.A., which indirctly owns all the voting securities of Eagle National Holding Company, Inc., proposes to acquire and directly own such shares.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00005 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

Middlefork Financial Group, Inc., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-30722) published on page 65327 of the issue for Tuesday, December 19, 1995.

Under the Federal Reserve Bank of Kansas heading, the entry for First Bank Holding Company of Colorado, Lakewood, Colorado, is revised to read as follows:

1. FirstBank Holding Company of Colorado Employee Stock Ownership Plan, Lakewood, Colorado, and its subsidiary, FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of The Bank of Douglas County, Castle Rock, Colorado.

Comments on this application must be received by January 11, 1996.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00007 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Request for an Exemption From Tying Provisions

National City Corporation, Akron, Ohio (National City), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. § 1971 *et seq.*) (section 106), that the Board grant an exemption to permit the subsidiary banks of National City to vary the consideration charged for a floorplan loan to an automobile dealership based on the dollar amount of retail paper financing originated by the dealership on behalf of National City. A ''floorplan loan'' is a loan or line of credit provided to an automobile dealership to finance the acquisition of the dealer's inventory for sale to the general public, and ''retail paper financing'' means financing provided to consumers seeking to purchase an automobile from the dealer's inventory.[1] National City indicates that floorplan loans and retail paper financing will remain separately available to customers at market prices. This request is similar to a request submitted by Huntington Bancshares, Incorporated. *See* 60 *Federal Register* 57,429 (November 15, 1995).

Section 106 generally prohibits a bank from varying the consideration charged for any product or service, including an extension of credit, on the condition or requirement that: (1) a customer obtain some additional credit, property, or service from such bank, other than a loan, discount, deposit, or trust service (so called, ''traditional bank products'') (*See* 12 U.S.C. § 1972(1)(A));[2] or (2) a customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service. (*See* 12 U.S.C. § 1972(1)(C)). The Board may, by regulation or order, grant exceptions that are not contrary to the purposes of the section.

National City argues that the proposed tying arrangement should be permissible under the statutory exceptions discussed above as well as exceptions contained in the Board's anti-tying rules. 12 CFR 225.7. However, National City is seeking an exemption from section 106 to clarify whether retail paper financing may be characterized as either a traditional bank product so that the proposal is consistent with the exception contained in 12 U.S.C. § 1972(1)(A), or as a practice related to and usually provided in connection with a floorplan loan so that the proposal is consistent with the exception contained in 12 U.S.C. § 1972(1)(C).

Even if the proposal does not fall within the literal terms of exceptions to the prohibitions contained in section 106, National City believes that the proposed package arrangement is not anticompetitive and is generally offered by its nonbank competitors who are not subject to section 106. National City also argues that the market for floorplan loans and retail financing services is national in scope and highly competitive, and that National City does not possesses sufficient market power in any relevant market to impair competition in that market. Furthermore, National City believes that the proposal is consistent with Congressional intent that section 106 not interfere with a customer's ability to negotiate the price of multiple banking services with a bank on the basis of the customer's entire relationship with the bank.[3] Finally, National City asserts that the proposal will promote competition because automobile dealerships may obtain floorplan lending and retail paper financing from other financial institutions, and there is no requirement that consumers finance their vehicle purchase through this arrangement.

Notice of National City's request is published in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106. The request may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal

[1] For purposes of this proposal, retail paper financing may consist of either: (1) a retail installment contract or similar instrument between the purchaser and the dealer which is then assigned to National City; or (2) a direct obligation between the purchaser and National City originated on National City's behalf by the dealer.

[2] Section 106 also prohibits a bank from varying the consideration charged for any product or service on the condition or requirement that a customer ''obtain'' some additional credit, property or service from an ''affiliate'' of such bank. *See* 12 U.S.C. § 1972(1)(B).

[3] S. Rep. No. 1084, 91st. Cong., 2d Sess., 16-17 (1970).

Reserve System, Washington, DC 20551, not later than January 29, 1996.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00010 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

Ohio Valley Banc Corp., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio Valley Banc Corp., Gallipolis, Ohio; to engage *de novo* through its subsidiary, Loan Central, Inc., in secured and unsecured consumer and commercial lending activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities are to be performed in Gallipolis, Ohio and South Point, Ohio.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* in data processing and data transmission services through the ownership, installation, operation, and maintenance of automatic teller machines in the State of Oregon, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00009 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

Royal Bank of Canada, Montreal, Quebec, Canada; Notice to Engage in Certain Nonbanking Activities

Royal Bank of Canada, Montreal, Quebec, Canada (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to acquire 20 percent of the voting shares of MECA Software, L.L.C., Fairfield, Connecticut (Company), a joint venture, and thereby engage in the development, production, and provision of home banking and financial management software, pursuant to section 225.25(b)(7) of Regulation Y (12 CFR 225.25(b)(7)). Company is currently owned by national banking subsidiaries of BankAmerica Corporation, San Francisco, California (BankAmerica), and NationsBank Corporation, Charlotte, North Carolina (NationsBank). Upon consummation of this proposal, national banking subsidiaries of Fleet Financial Group, Inc., Providence, Rhode Island, First Bank Systems, Inc., Minneapolis, Minnesota, BankAmerica, and NationsBank, would also each own 20 percent of Company. Company proposes to conduct these activities throughout the United States and Canada.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity ''which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.'' 12 U.S.C. 1843(c)(8). In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 19, 1996. Any request for a hearing on this proposal must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-00011 Filed 1-2-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 942–3344]

Mama Tish's Italian Specialities, Inc.; Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Comment agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Chicago-based flavored ice cup dessert manufacturer from misrepresenting the amount of calories or other nutrients in any of their frozen dessert products in the future. The consent agreement settles allegations stemming from nutritional claims made

in advertisements for Mama Tish's line of ice cups.

DATES: Comments must be received on or before March 4, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, IL 60603, (312) 353–8156, Barbara Di Giulio, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, IL 60603, (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mama Tish's Italian Specialties, Inc., a corporation, and it now appearing that Mama Tish's Italian Specialties, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed that by and between Mama Tish's Italian Specialities, Inc., by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its office and principal place of business located at 4800 Central Avenue, Chicago, Illinois 60638.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make the information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Mama Tish's Italian Specialties, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of calories or any other nutrient or ingredient in any such product. If any representation covered by this part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its

possession or control that contradict, qualify, or call into question such representation, including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

V

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, employees, and licensees engaged in the preparation or placement of advertisements or other materials covered by this Order.

VI

It is further ordered that respondent, or its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements containing any representation covered by this Order.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VIII

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Benjamin I. Berman,

Acting Secretary.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Mama Tish's Italian Specialities, Inc. (Mama Tish's).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Mama Tish's in its advertising for its ice cups.

The Commission's complaint in this matter charges Mama Tish's with engaging in unfair or deceptive practices in connection with its advertising of its ice cups. According to the complaint Mama Tish's falsely represented that its ice cups are low in calories.

The consent order contains provisions designed to remedy the violations charged and to prevent Mama Tish's from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Mama Tish's from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product. This part also requires any representation covered by this part that conveys a nutrient content claim defined by any regulation promulgated by the FDA pursuant to the Nutrient Labeling and Education Act of 1990 to meet the qualifying amount for that claim as set forth in that definition.

Part II of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by FDA pursuant to the Nutrient Labeling and Education Act of 1990, are not prohibited by the order.

Part III of the order requires Mama Tish's to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Mama Tish's to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order requires Mama Tish's to distribute copies of the order to its operating divisions and to various officers, agents and representatives of Mama Tish's.

Part VI of the order requires Mama Tish's to maintain copies of all advertisements containing representations covered by the order.

Part VII of the order requires Mama Tish's to file with the Commission one or more reports detailing compliance with the order.

Part VIII of the order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

[FR Doc. 96–00072 Filed 1–2–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 58 FR 14214, March 16, 1993 and 57 FR 54243, November 17, 1992) is amended to reflect an organization change in the Food and Drug Administration (FDA).

The Office of Communication, Training, and Manufacturers Assistance, Center for Biologics Evaluation and Research (CBER) is being established to increase the visibility and accessibility of training and consumer and

professional affairs activities. All training and communications functions have been centralized in the new Office. The Office will also serve as the focal point for overall industry liaison and communication activities within the Center. Training and staff development functions will be deleted from the Office of Management.

Under section HF–B, Organization:

1. Delete the subparagraph *Office of Management (HFB12),* under the *Office of the Center Director (HFB1),* Center for Biologics Evaluation and Research (HFB), under the *Office of Operations (HFA9),* in its entirety and insert a new subparagraph (p-2) reading as follows:

Office of Management (HFB12). Monitors the development and operation of planning systems for Center activities and resource allocations and advises the Center Director on Center administrative policies, guidelines, and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial, personnel, and administrative management services.

Directs Center organization, management, and information systems.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

2. Insert a new subparagraph, *Office of Communication, Training, and Manufacturers Assistance (HFBN),* under the *Office of the Center Director (HFB1),* reading as follows:

Office of Communication, Training, and Manufacturers Assistance (HFBN). Manages the Center's overall professional and management training program, career and staff development program, an employee orientation program, and related employee development policies.

Develops and maintains effective channels of both internal and external communication.

Serves as a liaison with Center components to provide advice and assistance to manufacturers and scientific associations to promote their understanding and compliance with FDA regulations.

Responsible for all activities relating to the administration of the Center's central document room.

Directs the Center's consumer and professional informational activities in coordination with the other Agency components.

3. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 12, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 96–00032 Filed 1–2–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Access Management for Cascade Reservoir, Boise Project, Payette Division, ID

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation), in accordance with the provisions of the Off-Road Vehicle Use regulation and Executive Orders 11644 and 11989, is implementing access management actions for Reclamation lands and water surface in the vicinity of Cascade Reservoir, Idaho as described in the Cascade Reservoir Resource Management Plan. The purpose of these actions is to provide appropriate and safe access to Reclamation lands while protecting important natural resources.

EFFECTIVE DATE: The effective date of the travel management plan is January 3, 1996.

ADDRESSES: Copies of the Cascade Reservoir Resource Management Plan (RMP) and RMP Summary are available at:

- Bureau of Reclamation, Snake River Area Office, 214 Broadway Avenue, Boise, ID 83702.
- Bureau of Reclamation, Cascade Field Station, PO Box 270, Cascade, ID 83611.

FOR FURTHER INFORMATION CONTACT: Steve Dunn, Natural Resource Specialist, Bureau of Reclamation, Snake River Area Office, 214 Broadway Avenue, Boise, ID, 83702, (208) 334–9844.

SUPPLEMENTARY INFORMATION: In April 1994 Reclamation completed a RMP and Environmental Assessment/Finding of No Significant Impact for approximately 6,329 acres of land and 28,300 acres of water surface at Cascade Reservoir, Idaho. The RMP was developed through extensive public involvement and interagency consultation and coordination. The RMP recommended that lands around Cascade Reservoir be managed for four general purposes with the following designations: Wildlife Management Areas (4,171 acres), Conservation/Open Space (1,271 acres), Recreation Sites (723 acres), and Rural Residential (146 acres). These management designations are shown on maps in the RMP and RMP Summary.

To meet the goal of providing appropriate and safe access to Reclamation lands consistent with Reclamation's Off Road Vehicle Use regulations 43 CFR Part 420, the RMP prescribed the following motorized vehicle regulations for each of the four management designations:

Wildlife Management Areas. Motor vehicle use, including winter use by snowmobiles, is prohibited except for official purposes.

Conservation/Open Space. Motor vehicle use is restricted to specific designated roadways or trails except that snowmobiles may travel off-road in winter.

Recretation Sites. Motor vehicles are restricted to existing and yet to be developed roads and trails except that snowmobiles may travel off-road in winter.

Rural Residential. Motor vehicles access by general public is allowed for emergency use only. Winter use by snowmobiles is prohibited. The RMP also designated lands below high water and the reservoir surface area open to snowmobiles in winter.

This designated motor vehicle use on lands around Cascade Reservoir supersedes the Notice of Designation of Certain Areas and Trails for Off-Road Vehicle Use at Cascade Reservoir, Boise Project, Valley County, Idaho published in the Federal Register, 42 FR 15760, Mar. 23, 1977, and the Notice of the Closing of Portions of Areas Previously Open for Off-Road Vehicle Use at Cascade Reservoir, Boise Project, Valley County, Idaho in 43 FR 44905, Sept. 29, 1978.

Dated: December 15, 1995.

John W. Keys, III,

Regional Director.

[FR Doc. 96–00012 Filed 1–2–96; 8:45 am]

BILLING CODE 4310–94–M

LIBRARY OF CONGRESS

Request for Information and Notice of Hearing: Study of the Current State of American Television and Video Preservation

AGENCY: Library of Congress.

ACTION: Notice of inquiry; notice of hearing.

SUMMARY: This Notice of Inquiry and Notice of Hearing advises the public

that the Librarian of Congress, in consultation with interested organizations and individuals, is conducting a study of the state of American television and video preservation and restoration in the United States. This study is being prepared pursuant to Public Law 94–553, which includes The American Television and Radio Archives Act of 1976. Section 113 (2 U.S.C. 170) authorizes the Librarian of Congress to preserve a permanent record of the television and radio programs which are the heritage of the people of the United States and to provide access to such programs to historians and scholars without encouraging or causing copyright infringement. This notice invites the submission of comments and information that will assist the Librarian in understanding the issues involved in the preservation of television and video materials nationwide. In addition, a Notice of Hearing advises the public that to complete this study the Librarian will hold three public hearings in March 1996 in Los Angeles, New York, and Washington, DC. Groups or individuals interested in participating in these public hearings should contact the Library of Congress about submitting oral and written comments. The hearings and public comments requested in this Notice are intended to elicit information (1) to assist the Librarian of Congress, in consultation with interested organizations and individuals, with the completion of the study and the establishment of a comprehensive national television and video preservation program; and (2), to coordinate the efforts of television and video archivists, copyright owners, creators, educators, and historians and other scholars concerned with preserving America's television and video heritage. The Librarian particularly invites comments from the following organizations and individuals: archives and libraries; broadcast and production companies, including local television stations; awards associations; schools specializing in television and video production training; interested funding organizations; federal and state agencies; museums; professional associations consisting of archivists, producers, creators, broadcasters, historians and other scholars; independent writers and researchers; manufacturers; and technical services vendors.

DATES AND HEARINGS AND PUBLIC COMMENTS: The three public hearings will be held in 1996: March 6, Los Angeles; March 19, New York; and March 26, Washington, DC.

All requests to testify orally at any of the hearings in March must be made by the deadline indicated below. The request should clearly identify the person and/or organization desiring to comment. The Librarian of Congress will provide additional information regarding the location and time of these hearings in the near future. Written statements for the hearings should be submitted in camera-ready copy by the dates indicated.

1996	
Los Angeles Hearing Deadlines:	
February 16 ...	Receipt of requests to testify.
February 21 ...	Receipt of written statements.
March 6	Public hearing in Los Angeles.
New York Hearing Deadlines:	
February 28 ...	Receipt of requests to testify.
March 6	Receipt of written statements.
March 19	Public hearing in New York.
Washington Hearing Deadlines:	
March 6	Receipt of requests to testify.
March 12	Receipt of written statements.
March 26	Public hearing in Washington.

Written submissions for use in the study are also invited from persons or organizations unable to testify or attend the hearings. All written comments or supplementary information should be received, in camera-ready copy, by April 29, 1996.

ADDRESSES: The written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, M/B/RS Division, Washington, DC, 20540–4690; Attn: Steve Leggett.

If delivered by hand: Library of Congress, M/B/RS Division, 338 James Madison Memorial Building, First and Independence Avenue, SE, Washington, DC, 20540–4690.

FOR FURTHER INFORMATION CONTACT: Steve Leggett, Library of Congress, M/B/RS Division, Washington, DC, 20540–4690. Telephone: (202) 707–5912; Facsimile: (202) 707–2371; or, William T. Murphy, Coordinator for the State of the American Television and Video Preservation Report, Library of Congress, M/B/RS Division, Washington, DC, 20540–4690. Telephone: (202) 707–5708; Facsimile: (202) 707–2371.

SUPPLEMENTARY INFORMATION: The Librarian of Congress has determined, in consultation with the National Film Preservation Board established pursuant to the National Film Preservation Act of 1992 (Pub. L. 102–307), that there is little up-to-date information on the problems facing American television and video preservation. For example, there is no current inventory of television and video materials in the public or private sector custody throughout the United States. Given the popularity and convenience of videotape, holdings are estimated to exceed several hundred thousand recorded hours together with millions of feet of newsfilm and other film used to record television programming. Accordingly, the Librarian recommended in his report ''Redefining Film Preservation: A National Plan'' (August 1994) that the Library of Congress conduct a national study on the state of preservation of American television and video materials within the framework of the American Television and Radio Archives (ATRA) legislation. The overall purpose of the study is to lay down a factual foundation for understanding the issues and problems facing the preservation of American television and video materials. To achieve this understanding the study will identify past milestones, the size and nature of holdings, anticipated growth, current policies and practices of various institutions and organizations, concerns of copyright owners and producers, applicable standards and technical problems, and access needs for research and education. After analyzing this information and consulting with the archival community, broadly determined, the Librarian intends to issue a national plan aimed at: (1) Coordinating the activities of archivists, copyright owners, and others in the private and public sectors, helping to ensure that their efforts are effective and complementary; (2) generating public awareness of the value and vulnerability of television and video materials; and (3) increasing the accessibility of television and video materials for educational purposes.

The Librarian would appreciate comment and information from individuals and organizations about the current state of American television and video preservation, including their suggestions on how the Library of Congress might best assist in coordinating a cooperative preservation program.

The questions below, loosely divided for archival, industry, and educational respondents, are only intended as suggestions to help them frame their comments or responses.

Archival

Institutional: What is the mission of your institution and how do television or video materials relate to your mission? What appraisal criteria are used in accepting materials for deposit? Does your institution specialize in certain subjects? Do you plan to acquire additional television or video materials?

Collections: What are your collecting policies? What are the size and date span of the materials in your possession or custody? What are the predominant formats? What are the major problems your institution has encountered in managing or enlarging your holdings?

Preservation: How is television and video preservation defined in your institution and what have been the major accomplishments (for example, inspection or monitoring, reformatting, restorations, etc.)? What institutional resources (fulltime staff, equipment, and funds) are devoted to preservation? What portion is externally funded? Does your institution provide reference service from the original or are reference copies made? To what degree are outside laboratories or vendors used? What are your quality assurance standards? How would you describe your preservation priorities?

Information and Access: How much of the collection can be used by researchers? Are reproductions available for sale or loan? What measures are taken in your own access activities to protect the rights of copyright owners? Is information about the holdings entered in a database (if so, please describe the database)? Is the computerized data available through the Internet or through a special link to users outside the institution?

Storage Facilities: Under what physical conditions are originals, masters, and reference copies stored (for example, temperature, relative humidity, air filtration, fire protection, and security)?

Cataloging and Documentation: To what extent are the materials cataloged and at what level (full or minimal)? What standards are employed? What is the cataloging backlog? Are production files, shot lists, or other relevant materials retained?

Industry

Corporate: What is the nature of your organization and how does the production or acquisition of television and video materials relate to your company's goals? Have you transferred or donated such materials to an archives or library?

Collections: What are the size and date span of the television and video materials in your possession? What are the predominant formats? What is the estimated rate of growth in quantities? What are the major problems you have encountered in managing television and video materials. How do you decide what materials to collect?

Preservation: How is television and video preservation defined in your organization and what have been the major accomplishments (for example, inspection and monitoring, reformatting, and restoration)? If reformatting has taken place, what format (or formats) was selected for the new master? Can you identify significant losses of valuable television and video materials? What organizational resources (fulltime staff, equipment and funds) are currently devoted to preservation? What criteria are used to determine preservation priorities? To what degree are outside laboratories or vendors used? What are your quality assurance standards? How would you describe your preservation priorities?

Information and Access: To what degree are the television and video materials in your custody described in hard copy or in a database? Under what circumstances is information about your company's television and video materials made available to outside individuals or institutions? Under what circumstances are the television and video materials in your possession made available for use by researchers outside of your organization?

Copyright: Have you encountered problems in locating or copying materials held by others for which you hold copyright? What new legal incentives might encourage television and video preservation?

Storage Facilities: Under what physical conditions are originals, masters, and reference copies stored (for example, temperature, relative humidity, air filtration, fire protection, and security)?

Educational

Value: Can you describe the value of television and video materials as a resource for research, teaching, audiovisual production, or other educational use? What are the most important television and video materials for your institution or for your individual research and teaching? Have you identified items of historical significance no longer extant?

Access: What problems have you encountered in locating and accessing needed television and video materials?

Outreach: What are your suggestions on how the archival, educational, and museum communities might foster greater public awareness of the educational value of television and video materials and their vulnerability to loss, damage, or deterioration?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 336, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SW, Washington, DC, 20540–4690.

Dated: December 26, 1995.

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–52 Filed 1–2–96; 8:45 am]

BILLING CODE 1410–34–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on January 18 and 19, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, January 18, 1996–8:30 a.m. until the conclusion of business.

Friday, January 19, 1996–8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Westinghouse best-estimate ECCS Code, W COBRA/TRAC. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee. Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: December 27, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–00048 Filed 1–2–96; 8:45 am]

BILLING CODE 7590–01–P

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 December 11, 1995, through December 20, 1995. The last biweekly notice was published on December 20, 1995 (60 FR 65672).

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 February 2, 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.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 1, 1995, as supplemented on December 1, 1995

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 2 and 3, Technical Specifications (TSs) and supporting TS Bases relating to the electrical distribution system. The changes are necessary to accommodate the installation of a new safety-related emergency diesel generator (EDG) and a non-safety EDG. The non-safety EDG will be used as an alternate air conditioning source of power in case of a station blackout. In addition to reflecting the new plant configuration, the proposed TSs also reflect the upgraded electrical capacities of the existing EDGs, increased fuel oil storage, and fire protection system for the new EDG building.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Engineered Safety Features (ESF) electrical system provides a reliable source of electrical power to the 4.16 kV ESF busses to operate the necessary accident mitigation equipment, should offsite power be lost. The proposed change to Units 1 and 2 Technical Specifications was prompted by two significant modifications to this system - the addition of No. 1A Emergency Diesel Generator (EDG) and the upgrade of the electrical capacity of two of the three existing Fairbanks Morse EDGs. The addition of No. 1A EDG provides the plant with an ESF electrical system configuration consisting of two EDGs dedicated to each unit, thereby eliminating reliance upon a ''swing'' diesel capable of being aligned to either unit. The four-EDG configuration provides a greater degree of flexibility when an EDG is being overhauled or tested during refueling outages. The increased electrical capacity of the existing Fairbanks Morse EDGs will give the operators greater flexibility in the choice of discretionary loads for the mitigation of accidents. Both modifications necessitate changes to the Technical Specifications.

The ESF electrical system, including the four EDGs, is used to mitigate the consequences of an accident. The design of the new No. 1A EDG is such that incorporation of this EDG into the existing ESF electrical system does not result in this system becoming an accident initiator. Furthermore, the modification to upgrade the capacity of the existing EDGs will enhance the plant operators' ability to mitigate accidents by allowing greater flexibility in the choice of discretionary loads, but will not change the configuration of the ESF electrical system or any support systems such that the EDGs would become an accident initiator. Therefore, the proposed change would not increase the probability of an accident previously evaluated.

The addition of the safety-related No. 1A EDG to the ESF electrical system will enhance the ability to provide reliable electric power during all modes of operation and shutdown conditions of the plant. Number 1A EDG and its support systems are designed such that failure of a single component will not prevent the capability to safely shut down the plant and to maintain the plant in a safe shutdown condition. Furthermore, non-safety-related systems associated with No. 1A EDG are designed so that their failure will not result in the loss of function of any safety-related system. The design of the Fire Protection System in the Diesel Generator Building meets the Codes and Standards specified in the mechanical and instrumentation and controls design reports, previously approved by the

Commission. Inclusion of components from these systems into the Technical Specifications is consistent with Calvert Cliff's current licensing basis. The proposed Technical Specifications will demonstrate the reliability and capability of No. 1A EDG and the upgraded Fairbanks Morse EDGs to perform their accident mitigation function. Implementation of the proposed Technical Specifications will not reduce the ability of the EDGs to perform their safety functions. The increased volume of fuel oil necessary to support operation of No. 1A EDG and the upgraded Fairbanks Morse EDGs will not adversely impact the ability of any systems to perform their safety functions. The auxiliary systems which required modification or analysis to support the upgraded ratings of the Fairbanks Morse EDGs will not adversely impact operation of any other plant systems necessary to mitigate the consequences of an accident. Based on the above, the proposed change would not increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change adds Surveillance Requirements, Limiting Conditions for Operation, and Action Statements to reflect the addition of a new EDG to the ESF electrical system, and upgrades the electrical capacity of the existing Fairbanks Morse EDGs. This change does not add any new equipment, modify any interfaces with any existing equipment, or change the equipment's function, or the method of operating the equipment to be modified. The system will continue to operate in the same manner as before the capacity upgrades were implemented. The additional fuel oil required to support the capacity upgrades will be stored in the existing Seismic Category I fuel oil storage tanks. The modified EDGs will continue to serve a function as accident mitigators, and will not become an initiator of any accident.

The NRC has reviewed the design of the new EDG, its attendant support systems and the new EDG Building, and concurs with Baltimore Gas and Electric Company's determination that the design satisfies the design requirements for a safety-related EDG. Number 1A EDG is a tandem engine-single generator set, and is physically very different from the existing single engine-generator Fairbanks Morse EDGs. However, the 4.16 kV three-phase rated electrical output is the same as that provided by the Fairbanks Morse EDGs to the other ESF busses. The excess capacity of No. 1A EDG will allow the operators greater flexibility in choosing post-accident discretionary loads, but will not cause any detrimental effects to the ESF busses or the equipment served by those busses. Operation of No. 1A EDG in accordance with these proposed Technical Specifications will not jeopardize the operation of any other plant systems. The design of the Fire Protection System in the Diesel Generator Building meets the Codes and Standards specified in the mechanical, and instrumentation and controls design reports, previously approved by the Commission. Inclusion of components from these systems into the Technical Specifications is consistent with Calvert Cliffs current licensing basis. Furthermore, locating No. 1A EDG and its fuel oil supply in a separate Category I building provides additional assurance that this equipment will not become an initiator of any accident.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the EDGs and the ESF electrical system is to provide a reliable source of electrical power to the safety-related busses to operate the necessary accident mitigation equipment, should offsite power be lost. The margin of safety associated with this safety function is two-fold: (1) a level of redundancy must be designed into the EDGs and the ESF electrical system such that the single failure criteria is met; and (2) the power supplied to the ESF electrical system by the EDGs must be sufficient to power the necessary accident mitigation equipment, should offsite power be lost.

The addition of No. 1A EDG provides the plant with an ESF electrical system configuration consisting of two EDGs dedicated to each unit, thereby eliminating reliance upon a swing diesel capable of being aligned to either unit. In the current configuration, the facility meets the single failure criteria on a ''per site'' basis. However, as a result of the new four-EDG configuration, each unit will have redundant diesel generators to supply power to redundant safety-related equipment required for safe shutdown or accident mitigation. The revised Fuel Oil System configuration and the minimum fuel oil volume to be maintained in the fuel oil tanks supports the safety function of the EDGs, while maintaining the margin of safety associated with this equipment. Altogether, the new four-EDG configuration may be considered an increase in the margin of safety.

Inclusion of Surveillances for the Fire Protection System components into the Technical Specifications is consistent with Calvert Cliffs current licensing basis, and ensures that adequate fire detection and suppression capability is available to identify and extinguish fires in the Diesel Generator Building, thereby reducing the potential for damage to No. 1A EDG and its auxiliaries. The Diesel Generator Building and its Fire Protection System is designed so that smoke and heat from a fire in that building will not impact the redundant safety-related Emergency Diesel Generator in the Auxiliary Building.

At the completion of the modifications to increase the capacities of the Unit 2 EDGs and to install the new No. 1A EDG, we will have diesel generators with more available margin than currently exists. This will provide the operators with more flexibility during conditions where the diesel generators are providing onsite power. The higher electrical capacities will result in an increase in the margin between the EDGs' electrical capacities and the electrical power required to operate safety-related equipment required for safe shutdown or accident mitigation. Therefore, these modifications may be considered an increase in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 30, 1995

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Technical Specifications (TSs) to allow the installation of tube sleeves as an alternative to plugging for repairing steam generator (SG) tubes. The proposed changes to TS 3/4.4.5, ''Steam Generators,'' and their supporting Bases would permit tube sleeving repair techniques developed by Westinghouse Electric Corporation and ABB Combustion Engineering, Inc., to be used as a repair method for the SGs at the Calvert Cliffs site.

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 would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of the proposed steam generator tube sleeving has been reviewed for impact on the current CCNPP [Calvert Cliffs Nuclear Power Plant] licensing basis.

Since the sleeve dimensions, materials, and connecting joints to the existing tube are designed to the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, the proposed sleeving

repair acts as an in-kind substitution for the original steam generator tubing. The applicable design criteria for the sleeves conform to the stress limits and margins of safety of Section III of the ASME Code. Safety factors of 3 for normal operation and 1.5 for accident conditions were applied to the design. Mechanical testing using the ASME Code stress allowables has been performed in support of the design. Based on the results of Westinghouse and ABB-Combustion Engineering analytical and test programs, the sleeves fulfill their intended function as leak tight structural members and meet or exceed all design criteria.

Evaluation of the proposed sleeved tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions or transients as may be experienced at CCNPP. Corrosion testing of sleeve-tube assemblies indicate no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The installation of the proposed sleeves is controlled via the sleeving vendors' proprietary processes and equipment. The ABB Combustion Engineering process has been in use since 1984, and has been implemented 24 times for the installation of over 4,200 sleeves. The Westinghouse process has been in use since 1988, and approximately 12,000 laser welded sleeves have been installed between 1988 and 1994. The CCNPP steam generator design was reviewed and found to be compatible with both installation processes and equipment.

The implementation of the proposed sleeves has no significant effect on either the configuration of the plant, or the manner in which it is operated. The hypothetical consequences of failure of the sleeved tube is bounded by the current steam generator tube rupture analysis described in Section 14.15 of the Calvert Cliffs Updated Final Safety Analysis Report.

Therefore, BGE [Baltimore Gas and Electric] has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) [The proposed amendment] would not create the possibility of a new or different kind of accident from any other accident previously evaluated.

As discussed above, the structural integrity, thermal characteristics, and material properties of the proposed sleeves are consistent with the existing plant steam generators. Therefore, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeves. In addition, the proposed sleeves do not interact with any other plant systems. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements. The implementation of the proposed sleeves has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, BGE concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) [The proposed amendment] would not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes via the use of the proposed sleeves has been confirmed to restore the structural integrity of the faulted tube under normal operating and postulated accident conditions. The design safety factors utilized for the sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The repair limit for the proposed sleeves is consistent with that established for the steam generator tubes. The design of the sleeve to tube joints is verified by testing to preclude significant leakage during normal and postulated accident conditions. Use of the previously identified design criteria and design verification testing assures that the margin to safety with respect to the implementation of the proposed sleeves is not significantly different from the original steam generator tubes.

Therefore, BGE concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: December 7, 1995

Description of amendments request: The proposed amendments would change the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Technical Specifications (TSs) by adding an analysis technique to the list of approved core operating limits analytical methods. Specifically, these amendments would add the convolution analysis technique to the list of approved methodologies in TSs 6.9.1.9.b. The convolution analysis technique has already been reviewed and approved by the NRC staff and the supporting safety evaluation was provided to the licensee by an NRC letter dated May 11, 1995.

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 change has been evaluated against the standards in 10 CFR 50.92 and has been determined to not involve a significant hazards consideration in that operation of the facility in accordance with the proposed amendment:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to add the convolution analysis technique previously approved by the NRC to the list of approved methodologies in Calvert Cliffs' Unit 1 and 2 Technical Specifications. By letter dated November 1, 1994, Baltimore Gas and Electric Company (BGE) requested approval to use the ABB/Combustion Engineering (ABB/CE) convolution technique for determining the values in the Calvert Cliffs Core Operating Limits Report (COLR) related to the pre-trip main steam line break event. Approval was given by the NRC in their letter dated May 11, 1995. The addition of this technique to the list of approved analytical methods in Technical Specification 6.9.1.9.b is simply intended to identify it as an approved methodology. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change is to add the convolution analysis technique previously approved by the NRC to the list of approved methodologies in Calvert Cliffs' Unit 1 and 2 Technical Specifications. By letter dated November 1, 1994, BGE requested approval to use the ABB/CE convolution technique for determining the values in the Calvert Cliffs COLR related to the pre-trip main steam line break event. Approval was given by the NRC in their letter dated May 11, 1995. The addition of this technique to the list of approved analytical methods in Technical Specifications 6.9.1.9.b is simply intended to identify it as an approved methodology. Therefore, the change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The proposed change is to add the convolution analysis technique previously approved by the NRC to the list of approved methodologies in Calvert Cliffs' Unit 1 and 2 Technical Specifications. By letter dated November 1, 1994, BGE requested approval to use the ABB/CE convolution technique for determining the values in the Calvert Cliffs COLR related to the pre-trip main steam line break event. Approval was given by the NRC in their letter dated May 11, 1995. The addition of this technique to the list of approved analytical methods in Technical Specification 6.9.1.9.b is simply intended to identify it as an approved methodology. Therefore, operation of the facility in accordance with the proposed amendment

does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: December 7, 1995

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 3.4.5 and 3.4.6.2 and their Bases to maintain voltage-based steam generator tube repair criteria for the tube support plate elevations beyond the current cycle of operation. The proposed amendment would implement a 2.0 volt repair limit to replace a 1.0 volt repair limit which was approved on an interim basis for only the current fuel cycle by License Amendment No. 184 [issued February 3, 1995]. The proposed amendment would also include changes in addition to those incorporated by License Amendment No. 184 to reflect the guidance provided in NRC Generic Letter (GL) 95-05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.''

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?

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% throughwall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube-to-TSP proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition, main steamline break (MSLB) pressure differential. As previously stated, the Regulatory Guide (RG) 1.121 criterion requiring maintenance of a safety factor of 1.43 times the MSLB pressure differential on tube burst is satisfied by 7/8'' diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts, regardless of the indicated depth measurement.

The upper voltage repair limit (V_{url}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{sl}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{nde}) and growth (V_{gr}) to establish V_{url}. Using Generic Letter (GL) 95-05 and growth allowances for an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{url} of 5.9 volts. The 20% NDE uncertainty represents a square-root-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability. The degradation growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger. This growth allowance is conservative for BVPS-1 [Beaver Valley Power Station, Unit No. 1] as the percent voltage growth rates have decreased for each of the last three inspections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valve (MSIV) represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, analyses will be performed to determine whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary-to-secondary leakage would result in postulated site boundary and control room doses exceeding 10 CFR 100, and 10 CFR 50, Appendix A, GDC-19 requirements, respectively. A separate calculation has determined the maximum allowable MSLB leakage limit in a faulted loop. This limit was calculated using the technical specification reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG-0800. The projected MSLB leakage rate calculation methodology prescribed in Section 2.b of GL 95-05 will be used to calculate the end-of-cycle (EOC) leakage. Projected EOC voltage distribution will be developed using the most recent EOC eddy current results and considering an appropriate voltage measurement uncertainty. The log-logistic probability of leakage correlation will be used to establish the MSLB leakrate used for comparison with the faulted loop allowable limit. Due to the relatively low voltage levels of indications at BVPS-1 and low voltage growth rates, it is expected that the calculated leakage values will not exceed this limit. Therefore, as implementation of the 2.0 volt voltage-based plugging criteria at BVPS-1 does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube 2.0 volt plugging limit does not introduce any significant changes to the plant design basis. Use of the 2.0 volt plugging limit does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as no outside diameter stress corrosion cracking (ODSCC) is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

Duquesne Light Company will continue to implement a maximum primary-to-secondary leakage rate limit of 150 gpd [gallons per day] per steam generator to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded.

The single through-wall crack lengths that result in tube burst at 1.43 times the MSLB pressure differential and the MSLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.41 inch long cracks at nominal leak rates and 0.62 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions using the lower 95% leakrate data. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncovery will provide benefit to the burst capacity of the intersection. Analyses have shown that only a small percentage of the TSPs are deflected greater than the TSP thickness during a postulated MSLB.

As steam generator tube integrity upon implementation of the 2.0 volt plugging limit

continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage-based bobbin probe tube support plate elevation plugging criteria at BVPS-1 maintains steam generator tube integrity commensurate with the criteria of RG 1.121. This guide describes a method acceptable to the Commission for meeting GDCs [General Design Criterion] 14, 15, 30, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC [Outside Diameter Stress Corrosion Cracking] at the tube support plate elevations is not expected to lead to a steam generator tuberupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant-accident (LOCA) + safe shutdown earthquake (SEE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS [reactor coolant system] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature. Second, there is a potential that partial through-wall cracks in tubes could progress to complete through-wall cracks during tube deformation or collapse.

The results of an analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation. Since the leak-before-break methodology is applicable to BVPS-1 reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurizer surge line break. Analysis results provided in WCAP-14122, dated July 1994, demonstrate that no tubes were subject to deformation or collapse. No tubes have been excluded from application of the subject voltage-based steam generator plugging criteria.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage-based tube plugging criteria of 2.0 volts is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate intersection voltage-based plugging criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduces the RCS flow margin. Thus, the implementation of the 2.0 volt plugging limit will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or any BASES of the plant technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

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: December 15, 1995

Description of amendment request: The proposed amendments would (1) revise Technical Specifications (TSs) 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 3/4.6.1.6, and associated Bases, (2) delete TS 6.9.2.g, and (3) add a new TS 6.17. The proposed changes would make the TSs consistent with Option B of recently revised Appendix J of 10 CFR Part 50 and the implementing guidance of Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' dated September 1995. Option B of Appendix J permits licensees to implement a performance based option rather than the previous prescriptive requirements now contained in Appendix J as Option A. The proposed amendments would remove from the TSs the prescriptive requirements of Option A concerning test frequencies and test methodology and would also include minor administrative and editorial changes to add consistency between the Bases and the TSs and to provide additional clarification.

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?

Containment leakage is not an accident initiator. The proposed amendment does not add or modify any existing plant equipment. Therefore there is no increase in the probability of an accident previously evaluated.

The consequences of an accident previously evaluated are not significantly increased. The proposed changes do not affect the assumptions, parameters or result of any Updated Final Safety Analysis (UFSAR) accident analyses. The containment leakage rate will continue to be maintained within the limit assumed in the accident analysis for a Design Basis Accident (DBA). The proposed changes do not modify the response of the containment during a DBA. The proposed amendment will continue to ensure that the ability of the containment structure, including the containment air locks, to limit leakage from a DBA is demonstrated using test methodologies and guidance on test frequencies that have been determined to be acceptable to meet the requirements of 10 CFR 50, Appendix J, Option B.

The potential increase to overall accident risk due to the containment leak tightness decreasing between extended testing intervals and the resulting potential increased radioactivity release to the environment during a DBA has been determined to be minimal based on the findings of NUREG 1493 titled ''Performance-Based Containment Leak-Test Program.'' In addition, due to the performance based nature of 10 CFR 50 Appendix J, Option B, the extended test intervals are utilized only when the component(s) have demonstrated an acceptable performance history. Therefore, a significant decrease in containment leak tightness between extended test intervals is not expected as a result of this proposed change.

Based on the above discussion, it is concluded that this change does 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 change does not involve any physical changes to the plant or changes in

plant operating configuration. The proposed amendment involves changes to plant programs and administrative requirements used in determining acceptable containment performance. The performance of plant systems, including the containment structure, during plant operation remains unchanged.

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 margin of safety is not significantly reduced by this proposed change. The acceptance criteria for ''as left'' measured containment leakage rates is not being increased as result of this proposed amendment. For Beaver Valley Power Station (BVPS) Unit No. 1 only, the ''as found'' maximum allowable overall Type A leakage rate is being slightly increased. However, the slight increase does not exceed the value assumed in accident analysis for containment leakage during a DBA due to changing the acceptance criteria from less than to less than or equal to. The margin between the acceptable ''as left'' measured overall Type A containment leakage rate and the leakage rate assumed in the accident analysis is not being decreased.

The maximum ''as found'' allowable overall Type A leakage rate remains unchanged for BVPS Unit No. 2. The margin between the acceptable ''as left'' measured overall Type A containment leakage rate and the leakage rate assumed in the accident analysis is also not being decreased.

The maximum allowable measured combined Type B and C leakage rate is not being increased above the current limits.

The maximum peak containment pressure following a DBA remains unchanged. The containment depressurization time following a DBA remains unchanged. The calculated offsite dose consequences of a DBA remains unchanged.

The proposed amendment continues to ensure reactor containment system reliability by periodic testing in compliance with 10 CFR 50, Appendix J, Option B. The extension of Type A, B and C test frequencies permitted by 10 CFR 50 Appendix J, Option B, is not expected to result in a significant decrease in containment leak tightness between test intervals. Due to the performance based nature of 10 CFR 50 Appendix J, Option B, the extended test intervals are utilized only when the component(s) have demonstrated an acceptable performance history. Therefore, a significant decrease in containment leak tightness between extended test intervals is not expected as a result of this proposed change.

The changes which are either administrative or editorial in nature will not reduce the margin of safety because they have no impact on any safety analysis assumptions.

Therefore, based on the above discussion, it can be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 19, 1995, as supplemented by letter dated December 7, 1995.

Description of amendment request: May 19, 1995, submittal requested to modify Action Statement for Technical Specification (TS) 3.6.4.2 for the hydrogen recombiners. It also requested to make the surveillance requirements for hydrogen recombiners consistent with NUREG-1432, ''Standard Technical Specifications Combustion Engineering Plants.'' The December 7, 1995, letter withdrew the request to change the Action Statement for TS 3.6.4.2.

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:

The response is predicated on the following technical bases: (1) the current licensing basis of record establishes that only one recombiner system is required to maintain hydrogen concentration below 4%, (2) the proposed technical specification changes are conservative when compared with the recommendations of Regulatory Guide 1.7, (3) short term post LOCA hydrogen generation is less than 1%, (4) long term post LOCA hydrogen generation is less than the flame propagation limit, which according to Regulatory Guide 1.7 would not result in adverse effects to containment systems, and (5) a design basis LOCA without long term hydrogen control would produce pressures below the containment design pressure.... Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter the configuration or operation of any other plant system or component. The change does not involve any change to the operational design or limits of any other plant systems or components. Thus, no new failure modes are introduced or associated with the proposed change. Therefore, 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 have no adverse impact on the protective boundaries, safety limits, or margin or safety. There are no limits or margins of safety being revised for any systems, components, or protective boundaries.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 7, 1995

Description of amendment request: Amendment to Technical Specification (TS) 3/4.8.1 ''Electrical Power Systems - AC Sources'' and the associated TS BASES. The proposed amendment would implement selected changes from NUREG 1432, ''Standard Technical Specifications Combustion Engineering Plants,'' Generic Letter (GL) 94-01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators,'' and GL 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation.'' The intent of these changes is to increase Emergency Diesel Generator (EDG) reliability by reducing the stresses on the EDGs caused by unnecessary testing. This proposed TS amendment will also relocate the Surveillance Requirements for maintaining the properties of the fuel oil to TS Section 6, ''Administrative Controls.'' These requirements will be implemented as part of the Fuel Oil Testing Program. In addition, the requirement for cleaning the diesel fuel oil storage tanks with a sodium hypochlorite solution or equivalent will be changed to also allow an appropriate mechanical method (such as pressure washing or manual wiping) to be utilized.

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 Standby Diesel Generators do not initiate any accidents, therefore the proposed changes do not increase the probability of an accident previously evaluated. The proposed changes to TS 3/4.8.1 and the associated BASES affect the required actions in response to inoperable offsite and onsite AC sources, Surveillance Requirements for the EDG, and reporting requirements for EDG failures. The majority of the proposed changes are based on the recommendations of NUREG 1432, GL 94-01, and GL 93-05. These proposed changes have been extensively reviewed by the NRC during the preparation of these documents and by Waterford 3 SES during the development of this request for TS amendment. The proposed changes are expected to result in improvements in EDG performance and reduce EDG aging due to excessive testing. The proposed changes will permit the elimination of the unnecessary mechanical stress and wear on the EDGs while ensuring that the EDGs will perform their design function. The elimination of mechanical stress and wear will improve reliability and availability of the EDGs which will have a positive effect on the ability of the EDGs to perform their design function. The proposed changes do not affect the availability or the testing requirements of the offsite circuits.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes to TS 3/4.8.1 and the associated Bases do not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints which could initiate a new or different kind of accident. The proposed changes do not affect the design or performance characteristics of any EDG or its ability to perform its design function. No new failure modes have been defined and no new system interactions have been introduced for any plant system or component. In addition, there have not been any new limiting failures identified as a result of the proposed changes. The proposed changes will eliminate unnecessary EDG testing and will increase EDG reliability and availability. This will have an overall positive affect on plant safety. Accidents concerning loss of offsite power and a single failure (e.g., loss of an EDG) have previously been evaluated. These changes are intended to improve plant safety, decrease equipment degradation, and remove an unnecessary burden on personnel resources by reducing the amount of testing that the TS requires during power operation.

Relocating the diesel fuel oil testing requirements to the Waterford 3 Fuel Oil Testing Program outside of the Technical Specifications is an administrative change only and consequently has no effect on accident probability, consequences, or margin. Also, the proposed cleaning method for the diesel fuel oil storage tanks meets the intent of Regulatory Guide 1.137 and will not result in the degradation of the fuel oil.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Under the proposed changes to TS 3/4.8.1 and the associated Bases, the EDGs will remain capable of performing their safety function. The changes do not affect the design or performance of the EDGs, but will increase EDG reliability and availability by reducing the stresses and the effects of aging on the EDG by eliminating unnecessary testing. This will result in an overall increase in plant safety. The ability of the EDGs to perform their safety function will not be degraded. Relocating the diesel fuel oil testing requirements to the Waterford 3 Fuel Oil Testing Program outside of the Technical Specifications is an administrative change only and consequently has no effect on accident probability, consequences, or margin. Also, the proposed cleaning method for the diesel fuel oil storage tanks meets the intent of Regulatory Guide 1.137 and will not result in a reduction in the margin of safety.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: (TS 93-09) December 8, 1995

Description of amendment request: The proposed change would revise the setpoints and time delays for the auxiliary feedwater loss-of-power and 6.9-kv shutdown board loss-of-voltage and degraded-voltage instrumentation setpoints in Items 6 and 7 of Technical Specification Table 3.3-4, respectively.

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:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision supports the implementation of design logic and setpoint changes to the loss-of-power relaying. This relaying is designed to ensure adequate voltage is available to safety-related loads in order to enhance their operability and support accident mitigation functions and to provide for auxiliary feedwater (AFW) pump starts. The design changes alter relay logic and delete unnecessary relaying, but do not change the diesel generator (D/G) start and load-shedding actuations that result from loss-of-power conditions. Therefore, no new actuations or functions have been created; and because the existing and proposed functions provide for accident mitigation considerations that are not the source of an accident, the probability of an accident is not increased. The deletion of the 6.9-kilovolt shutdown board normal-feedwater undervoltage relays actually reduces the potential for inadvertent shutdown board blackouts as a result of short-duration voltage transients or instrument failures.

The setpoints and time delays for loss-of-power functions have been modified based on the guidelines developed by the Electrical Distribution System Clearinghouse as evaluated and determined through detailed analysis by TVA. This design is documented in TVA Calculations SQN-EEB-MS-T106-0008, 27DAT, and DS-1-2 and is available for NRC review at the SQN site. The assigned values are conservative settings that will ensure adequate voltage is supplied to safety-related loads for accident mitigation and safety functions under normal, degraded, and loss-of-offsite power voltage conditions with appropriate time delays to prevent damage to electrical loads and minimize premature or unnecessary actuations. The identification of loss-of-voltage conditions is enhanced by the design changes to ensure the timely sequencing of loads onto the D/G and the initiation of AFW pump starts for accident mitigation. Because there are no reductions in safety functions resulting from the design logic, setpoint and time-delay changes to the loss-of-power instrumentation and offsite dose levels for postulated accidents will not be increased, the consequences of an accident are not increased.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification incorporated in the proposed change do not affect plant functions. These changes reflect the requirements that SQN has been maintaining and serve to clarify the requirements to provide consistency of application and easier understanding. The AFW footnote addition and bases revision only clarify operability conditions that are consistent with the plant design for the AFW pump and loss-of-power instrumentation. Because there are no changes to plant functions or operations, these revisions have no impact on accident probabilities or consequences.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the loss-of-power instrumentation ensures adequate voltage to safety-related loads by initiating D/G starts and load shedding and provides for AFW pump starting, but is not considered to be the source of an accident. Although the design logic, setpoint, and time-delay actuation criteria have changed, the output functions to various plant systems that actuate for load shedding and D/G starts remain the same. Therefore, actuation criteria have been affected, but not safety functions, and the TVA evaluation has confirmed that the new design enhances the ability to maintain adequate voltage to support safety functions. Since safety functions have not changed and the new loss-of-power instrumentation design continues to support operability of safety-related equipment, no new or different accident is created.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification, as well as the AFW operability clarifications, do not affect plant functions and will not create a new accident.

3. Involve a significant reduction in a margin of safety.

The proposed loss-of-power TS changes support design logic, setpoint, and time-delay requirements that have been verified by TVA analysis to provide acceptable voltage levels for safety-related components. In determining the acceptability of these voltage levels, the minimum voltage for operation as well as detrimental component heating resulting from sustained degraded-voltage conditions were considered. This design ensures that safety-related loads will be available and operable for normal and accident plant conditions. The applicable mode addition, TS 3.0.4 exclusion deletion, response time measurement clarification, and AFW operability clarifications provide enhancements to TS requirements and do not affect plant functions. Therefore, no safety functions are reduced by these changes and there is no reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: (TS 95-20) December 8, 1995

Description of amendment request: The proposed change would revise Surveillance Requirements 4.6.2.1.1.d and 4.6.2.1.2.b to extend the containment spray nozzle air or smoke flow tests from the present 5-year interval to a 10-year interval, in accordance with Generic Letter 93-05.

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:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS change is consistent with the guidance provided in Generic Letter 93-05. Containment spray (CS) systems' header piping is stainless steel; therefore, corrosion will be negligible during the extended surveillance interval. Since the CS systems' headers are maintained dry, there is no mechanism that could cause blockage of the spray nozzles. Therefore, the nozzles in the CS systems will remain operable, during the 10-year surveillance interval, to mitigate the consequence of an accident previously evaluated. Additionally, clogging or blockage has not been observed during the 5-year surveillance tests that have been performed in the past at SQN. Testing the CS systems' nozzles at the proposed reduced frequency will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed reduced frequency testing of the CS systems' nozzles does not change the manner in which these systems are operated. The reduced testing frequency of the spray nozzles does not generate any new accident precursors. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed changes in surveillance frequency of the CS system's nozzles.

3. Involve a significant reduction in a margin of safety.

Reduced testing of the CS systems' nozzles does not change the way the systems are operated or the systems' operability requirements. In this application, any additional corrosion of stainless steel piping will be negligible during the extended surveillance interval. Since the CS systems are maintained dry, there is no additional mechanism that could cause blockage of the nozzles. Therefore, the proposed reduced testing frequency is adequate to ensure spray nozzle operability. The surveillance requirements do not affect the margin of safety since the operability requirements of both the CS systems remains unchanged. The existing safety analysis remains bounding. Therefore, there is no reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 8, 1995 (TS 95-24)

Description of amendment request: The proposed change would modify various Technical Specification requirements in order to implement the recent rule change to 10 CFR Part 50, Appendix J. The new Appendix J rule (Option B) provides a voluntary performance based testing option for containment leakage rate testing (CLRT). Option B CLRT requirements are based on system and component performance in lieu of compliance with the current prescriptive requirements. Option B allows extension of the integrated leakage rate test (Type A test) frequency based on an acceptable past history. For Type B and Type C local leak rate test, Option B allows extension of the test frequency based on plant-specific experience history of each component and establishes controls to ensure continued performance during extended testing intervals.

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:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria

established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to SQN TSs is in accordance with Option B to 10 CFR 50, Appendix J. The proposed amendment adds a voluntary performance based option for containment leak rate testing. The changes being proposed do not affect the precursor for any accident or transient analyzed in Chapter 15 of SQN Updated Final Safety Analysis Report. The proposed change does not increase the total allowable primary containment leakage rate. The proposed change does not reflect a revision to the physical design and/or operation of the plant. Therefore, operation of the facility, in accordance with the proposed change, does not significantly affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment to SQN TSs is in accordance with the new performance-based option (Option B) to 10 CFR 50, Appendix J. The changes being proposed will not change the physical plant or the modes of operation defined in the facility license. The proposed changes do not increase the total allowable primary containment leakage rate. The changes do not involve the addition or modification of equipment, nor do they alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to SQN TSs is in accordance with the new option to 10 CFR 50, Appendix J. The proposed option is formulated to adopt performance-based approaches. This option removes the current prescriptive details from the TS. The proposed changes do not affect plant safety analyses or change the physical design or operation of the plant. The proposed change does not increase the total allowable primary containment leakage rate. Therefore, operation of the facility, in accordance with the proposed change, does not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: December 12, 1995 (TS 95-23)

Description of amendment request: The proposed change would incorporate new requirements associated with steam generator tube inspections and repair. The new requirements would establish alternate steam generator tube plugging criteria at the tube support plate intersections.

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:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free-span tubing (no tube support plate restraint) at room temperature conditions shows burst pressures in excess of 5,000 pounds per square inch (psi) for indications of outer diameter stress corrosion cracking with voltage measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 5,200 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts (WCAP-13990), regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle [EOC] voltage) compares favorably with the 8.82-volt structural limit considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electro-discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Because of the few number of indications at SQN, the EPRI methodology of applying a growth component of 35 percent per effective full power year (EFPY) will be used. Near-term operating cycles at SQN are expected to be bounded by 1.23 years, therefore, a 43 percent growth component is appropriate. When these allowances are added to the BOC alternate plugging criteria (APC) of 2.0 volts in a deterministic bounding EOC voltage of approximately 3.26 volts for Cycle 7, operation can be established. A 5.56-volt deterministic safety margin exists (8.82 structural limit - 3.26-volt EOC equal 5.56-volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.82 volts. Using this structural limit of 8.82 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit the existence of EOC indications that exceed the 8.82-volt structural limit. By adding NDE uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 8.82 volts can be represented by the expressions:

RL + (0.205 x RL) + (0.43 x RL) = 8.82 volts, or,

the maximum allowable BOC repair limit can be expressed as,

RL = 8.82-volt structural limit/1.64 = 5.4 volts.

This RL (5.4 volts) is the appropriate limit for APC implementation to repair bobbin indications greater than 2.0 volts independent of rotating pancake coil (RPC) confirmation of the indication. This 5.4-volt upper limit for non-confirmed RPC calls is consistent with other recently approved APC programs (Farley Nuclear Plant, Unit 2).

The conservatism of the growth allowance used to develop the repair limit is shown by the most recent SQN eddy current data. Only seven tubes in Unit 2 required repair because of outside diameter stress corrosion cracking (ODSCC) at the TSP intersections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main

SLB outside of containment, but upstream of the main steam isolation valve (MSIV), represents the most limiting radiological condition relative to the APC. Implementation of the APC will determine whether the distribution of cracking indications at the TSP intersections is projected to be such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. A separate analysis has determined this allowable SLB leakage limit to be 3.7 gallons per minute (gpm) in the faulted loop. This limit uses the TS reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG-0800. The analysis method is WCAP-14277, which is consistent with the guidance of the NRC generic letter (GL) [95-05] and will be used to calculate EOC leakage. Because of the relatively low number of indications at SQN, it is expected that the actual leakage values will be far less than this limit. Additionally, the current Iodine-131 levels at SQN range from about 25 to 100 times less than the TS limit.

Application of the criteria requires the projection of postulated SLB leakage, based on the projected EOC voltage distribution for Cycle 8 operation. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Data indicates that a threshold voltage of 2.8 volts would result in throughwall cracks long enough to leak at SLB condition. The GL requires that all indications to which the APC are applied must be included in the leakage projection. Tube pull results from another plant with 7/8-inch tubing with a substantial voltage growth database have shown that tube wall degradation of greater than 40 percent throughwall was readily detectable either by the bobbin or RPC probe. The tube with maximum throughwall penetration of 56 percent (42 average) had a voltage of 2.02 volts. The SQN Unit 1 pulled tube had a 1.93-volt indication with a maximum depth of 91 percent and did not leak at SLB condition. Based on the SQN pulled tube and industry pulled tube data supporting a lower threshold for SLB leakage of 2.8 volts, inclusion of all APC intersections in the leakage model is quite conservative. The ODSCC occurring at SQN is in its earliest stages of development. The conservative bounding growth estimations to be applied to the expected small number of indications for the upcoming inspection should result in very small levels of predicted SLB leakage. Historically, SQN has not identified ODSCC as a contributor to operational leakage.

In order to assess the sensitivity of an indication's BOC voltage to EOC leakage potential, a Monte Carlo simulation was performed for a 2.0-volt BOC indication.

The maximum EOC voltage (at 99.8 percent cumulative probability) was found to be 4.8 volts. The leakage component from an indication of this magnitude, using the EPRI leakage model, is 0.028 gpm.

Therefore, as implementation of the 2.0-volt APC does not adversely affect steam generator (S/G) tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Implementation of the proposed S/G tube APC does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSP. Neither a single or multiple tube rupture event would be expected in a S/G in which the plugging criteria is applied (during all plant conditions).

TVA will implement a maximum leakage rate limit of 150 gallon per day per S/G to help preclude the potential for excessive leakage during all plant conditions. The SQN TS limits on primary-to-secondary leakage at operating conditions include a maximum of 0.42 gpm (600 gallons per day [gpd]) for all S/Gs, or, a maximum of 150 gpd for any one S/G. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown is based upon leak-before-break considerations to detect a free-span crack before potential tube rupture during faulted plant conditions. The 150-gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.82 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95 percent prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.82 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the ''longest permissible crack'' for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.43 times the SLB pressure differential and the SLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.4-inch-long cracks at nominal leak rates and 0.6-inch-long cracks at the lower 95 percent confidence level leak rates. Since tube burst is precluded during normal operation because of the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150-gpd limit provides for plant shutdown before reaching critical crack lengths for SL-conditions. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncover will provide benefit to the burst capacity of the intersection.

As S/G tube integrity upon implementation of the 2.0-volt APC continues to be maintained through in-service inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

The use of the voltage based APC at SQN is demonstrated to maintain S/G tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC Staff for meeting General Design Criteria (GDC) 14, 15, 31, and 32 by reducing the probability or the consequences of S/G tube rupture. This is accomplished by determining the limiting conditions of degradation of S/G tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a S/G tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant accident (LOCA), plus safe shutdown earthquake (SSE) on the S/G component (as required by GDC 2), it has been determined that tube collapse may occur in the S/Gs at some plants. This is the case as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate because of the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with S/G tube collapse. First, the collapse of S/G tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA, which in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the SQN reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurizer surge line break. LOCA loads for the primary pipe breaks were used to bound the conditions at SQN for smaller breaks. The results of the analysis

using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in S/G tube collapse or significant deformation. The LOCA, plus SSE tube collapse evaluation performed for another plant with Series 51 S/Gs using bounding input conditions (large-break loadings), is applicable to SQN. Therefore, at SQN, no tubes will be excluded from using the voltage repair criteria due to deformation of collapse of S/G tubes following a LOCA plus an SSE. Additional supporting information relative to NRC review of J.M. Farley Nuclear Plant was provided in Enclosure 5, Item 3 of TVA's submittal dated September 7, 1995 (TAC No. M92961).

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 2.0 volt is supplemented by: (1) enhanced eddy current inspection guidelines to provide consistency in voltage normalization, (2) a 100 percent eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 21, 1995

Brief description of amendments: The proposed amendments would modify the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications (TS) to allow the containment personnel airlock (PAL) doors to remain open during movement of irradiated fuel and during core alterations.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows the PAL doors for containment to remain open during the movement of irradiated fuel and core alterations. Whether or not the PAL doors are open does not effect the movement of fuel, the strict compliance with the procedures governing refueling operations, or the integrity of fuel assemblies. The position of the airlock doors cannot, in itself, be the initiating event in any accident. The probability of a fuel handling accident is not changed.

The consequences of leaving the airlock doors open during this accident are bounded by the existing analysis, provided the fuel handling accident assumptions are maintained (e.g. 100 hours after reactor shutdown and the water level remains 23 feet above the fuel). The existing analysis postulates the limiting fuel handling accident to occur in the Fuel Building with no credit taken for barrier or filtration. This accident analysis envelopes the proposed change for a fuel handling accident occurring in the Containment Building.

Were a fuel handling accident to occur with the PAL doors open, the impact would be minimal. Pressure is expected to be essentially equalized across the door with little air flow either into or out of containment. Based on transport time from the location of the accident to the PAL, little, if any, radioactive material is expected to escape containment via the PAL. The amount that might escape would not necessarily be anymore than might escape as the door is cycled to evacuate personnel. What does escape will be filtered by the Primary Plant Ventilation System, the same as if the accident were to occur in the fuel building. In summary, not only is the accident clearly bounded by the existing analysis, the actual increase in release of radioactive material outside the plant will be insignificant if there is any measurable increase at all.

Based on the above, allowing the PAL doors to remain open during movement of irradiated fuel and core alterations, has no significant effect on the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different type of accident from any accident previously evaluated?

The change does not add new hardware. The only change in the operation of the plant is that the PAL doors will remain open during movement of irradiated fuel and core alterations. Because the current fuel handling accident analysis considers fuel handling accidents in either the Fuel Building or the Containment Building, the current fuel handling accident analysis remains bounding for the proposed change. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The assumptions used to calculate the offsite dose resulting from a fuel handling accident in [the] Containment Building are equivalent to assuming that the PAL remains open for the entire accident and that no filtration occurs. Since no credit was taken for any containment barrier or ventilation system filtration, the dose to the public as calculated in the analysis is not affected by this change. Therefore, the proposed change 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: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 21, 1995

Brief description of amendments: The proposed amendment would revise the core safety limit curves and revised N-16 Overtemperature reactor trip setpoints as a result of the reload analyses for CPSES Unit 2, Cycle 3. In addition, the minimum required Reactor Coolant System (RCS) flow is increased and an administrative enhancement is included in the footnotes of the RCS flow - low reactor trip function setpoint for both Units.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Increase in Unit 2 minimum required flow

This revision increases the Unit 2 minimum required RCS flow rate assumed in

the safety analyses by 3.6%. The actual core flow is unchanged and is approximately 6.6% higher than the value assumed in previous accident analyses. The remaining 3.0% flow is sufficient to account for all uncertainties associated with the core flow measurement.

Since this change only involves analysis methodology and does not affect the actual core flow, it does not increase the actual probability or consequences of any postulated accident.

When considered separately, increasing the minimum required RCS flow is a conservative change. Although there is no impact on the initiation of any postulated accidents, the potential severity of the affected accidents is typically less when flow is increased. In general, the increased ability to remove heat from the fuel will reduce the peak temperature seen by the fuel and reduce the potential for undesirable boiling conditions. Thus, the increase in the assumed RCS flow will not increase the probability or consequences of an accident previously analyzed.

B. Revision to the Unit 2 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed in-house analyses of the Unit 2, Cycle 3 core to determine the reactor core safety limits. The newer methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a similar range of acceptable conditions. This change means that if a transient were to occur with the plant operating at the limits of the new curve, a higher temperature and power level might be attained than if the plant were operating within the bounds of the old curves. However, since the new curves were developed using approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification bases for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

C. Revision to Unit 2 Overtemperature N-16 Reactor Trip Setpoints, Parameters and Coefficients

As a result of changes discussed, the Overtemperature N-16 reactor trip setpoint has been recalculated. These trip setpoints help ensure that the core safety limits are maintained and that all applicable limits of the safety analysis are met.

Based on the calculations performed, the safety analysis value for Overtemperature N-16 reactor trip setpoint has changed. This essentially means if a transient were to occur, the actual temperature and power level could be slightly higher. However, the analyses performed show that, using the TU Electric methodologies, all reactor core safety limits are met and all applicable limits of the safety analysis are met. This parameter has a setpoint which allows the mitigation of postulated accidents and has no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying the core safety limits and all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, the changes result in setpoint values which potentially offer safety benefits. The risk of turbine runbacks or reactor trips due to upper plenum flow anomalies will be minimized with a higher overtemperature setpoint, thus reducing potential challenges to the plant safety systems. A final benefit is that the new methods for considering N-16 setpoints and values will be consistent with Unit 1, which reduces the potential for personnel error due to unit differences.

Considering both the safety analysis impact and the benefits described above, the changes in N-16 setpoints and parameters will result in slight reduction in the probability of an accident and do not significantly increase the consequences of an accident previously evaluated.

D. Deletion of footnotes associated with the RCS flow - low reactor trip setpoint

In lieu of revising the footnotes to support the Unit 2 Cycle 3 operation, the deletion of the footnote is proposed. Further, for consistency with Unit 2, the same change is proposed for Unit 1. This change will not affect current plant practice; however, it will impose a more restrictive RCS flow - low setpoint than is currently required. The RCS flow - low reactor trip setpoint is currently specified in Technical Specification Table 2.2-1, Functional Unit 12.b, to be 90% of the minimum measured RCS flow. The proposed change would require the setpoint to be 90% of the instrument span where 100% of instrument span approximately corresponds to the actual RCS flow. The actual RCS flow is verified to be greater than the RCS flow assumed in the accident analysis through compliance with Technical Specification 3.2.5. Thus, through deletion of the footnotes, the RCS volumetric flow corresponding to the reactor trip setpoint will be greater than or equal to the volumetric flow allowed by the current specifications.

In summary, the proposed deletion of the footnotes will have no impact on current plant operations. A possible relaxation of the RCS flow - low setpoint which is currently allowed by the Technical Specifications will be removed without creating the potential for unnecessary plant trips.

The RCS flow - low reactor trip setpoint can have no effect on the probability of an accident. Because the reactor will be tripped at or prior to the conditions assumed in the accident analyses, there will be no effect on the consequences of an accident previously identified.

SUMMARY

The changes in the amendment request applies new NRC approved methodologies, changes in safety analysis values, new core safety limits and new N-16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an operational transient to occur has been reduced and there has been no significant impact on the consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve the use of revised safety analysis values and the calculation of new reactor core safety limits and reactor trip setpoints. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below.

A. Increase in the Unit 2 minimum required flow

In performing the DNB-related analyses, the Reactor Coolant System flow rate assumed in these analyses is increased by 3.6 percent to insure that all applicable limits of the safety analysis are met. The Technical Specification 3/4.2.5 limit for this parameter will be changed to insure that it is maintained within the normal steady-state envelope of operation assumed in the transient and accident safety analyses (i.e., ensuring that the RCS flow rate assumed in the safety analyses remains valid). The Technical Specification limits are consistent with the initial safety analysis assumption (plus uncertainties) and have been analytically demonstrated to be adequate to maintain a minimum DNBR at or above the safety analysis DNBR limit throughout each analyzed transient. Because the 95/95 DNBR acceptance criteria is met with the proposed change and assumptions of the safety analyses are maintained valid by the Technical Specification limits, there is no change in a margin of safety.

B. Revision to the Unit 2 Reactor Core Safety Limits

The TU Electric reload analysis methods have been used to determine new reactor core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with Technical Specification BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 2, Cycle 3, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid.

In conjunction with the reactor core safety limit methodology, the NRC approved TUE-1 DNB correlation is used for performing DNB-related analyses. This correlation will be applied to the core configuration of CPSES Unit 2, Cycle 3 and future core configurations. The TUE-1 correlation DNBR limit is established such that there is a 95 percent probability with 95 percent confidence level that DNB will not occur when the minimum DNBR for the limiting fuel is greater than or equal to the TUE-1 correlation DNBR limit. This 95/95 criteria defines the ''margin of safety'' for the DNB-

related analysis and remains valid even though the DNB correlation and associated correlation limit are changed. Margin is provided in the DNB-related analysis for known and potential effects such as hydraulic differences between the two co-resident fuel assembly designs and the presence of the Reactor Coolant System lower plenum flow anomaly. The TUE-1 correlation DNBR limit plus margin constitutes the safety analysis DNBR limit. The accident analyses are performed to ensure that the safety analysis DNBR limit acceptance criteria are satisfied. Because the 95/95 DNBR acceptance criteria remains valid and continues to be satisfied, no change in a margin of safety occurs.

C. Revision to Unit 2 Overtemperature N-16 Reactor Trip Setpoints, Parameters and Coefficients

Because the reactor core safety limits for CPSES Unit 2, Cycle 3 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint which protect the reactor core safety limits must also be recalculated. The Overtemperature N-16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The most relevant design basis analysis in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) which is affected by the change in the safety analysis value for the CPSES Unit 2 Overtemperature N-16 reactor trip setpoint is the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Power (FSAR Section 15.4.2). This event has been re-analyzed with the revised safety analysis value for the Overtemperature N-16 reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint (Technical Specification Table 2.2-1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2-1. Meeting the requirements of Technical Specification Table 2.2-1 assures that the Overtemperature N-16 reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 2, Cycle 3 Overtemperature N-16 reactor trip setpoint is different from previous cycles which provides more operational flexibility to withstand mild transients without initiating automatic protective actions. Although the setpoint is different, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint are consistent with the safety analysis assumption which has been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

D. Deletion of footnotes associated with the RCS flow - low reactor trip function

The deletion of the footnotes, and the potential relaxation of the RCS flow - low setpoint which could be used, will provide further assurance that, in the event of a partial loss of forced RCS flow or locked rotor transient, a reactor trip signal would be initiated prior to the conditions assumed in the accident analyses. Thus, the accident analyses are unaffected, and there is no reduction in a margin of safety.

SUMMARY

The proposed changes to the CPSES Technical Specifications involve using NRC-approved licensing analysis methods developed by TU Electric to determine the Technical Specification reactor core safety limits and perform DNB-related analysis for CPSES Unit 2, Cycle 3. The DNB-related analyses are performed by TU Electric using a qualified, state-of-the-art departure from nucleate boiling (DNB) correlation, TUE-1, which has also been approved by the NRC for the CPSES Unit 2, Cycle 3 core configuration. In performing these analyses, the minimum required Reactor Coolant System flow rate is increased by 3.6 percent. Because the core safety limits for CPSES Unit 2, Cycle 3 are recalculated, the Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint which protect the core safety limits are also recalculated.

Using the NRC approved TU Electric methods, the reactor core safety limits are determined such that all applicable limits of the safety analyses are met, particularly the 95/95 DNBR limit. The Technical Specification 3/4.2.5 limits for the DNB Parameters insure the assumptions in the safety analyses remain valid. Because the applicable event acceptance criteriacontinue to be met, there is no 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: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: William D. Beckner

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: October 17, 1995

Description of amendment request: The proposed amendment would modify the North Anna Power Station, Units 1 and 2 Technical Specifications (TS) to allow both of the containment personnel airlock doors to remain open during refueling operations, delete the license condition referencing the analyses for limiting doses to the control room operators, and modify the TS Bases to clarify the emergency power system requirements relative to mitigation of the consequences of a Fuel Handling 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, which is presented below:

There is no significant change in the probability or consequences of an accident previously evaluated. There are no system changes which would increase the probability of an accident occurring. Allowing both personnel airlock doors to remain open during core alterations or fuel movement inside containment will not have any impact on the probability of a Fuel Handling Accident either in containment or in the fuel building. The consequences of a Fuel Handling Accident have been investigated by performing a reanalysis with no credit for isolation or filtration by the Fuel Building or containment ventilation systems. The Exclusion Area Boundary [EAB] and Low Population Zone [LPZ] doses for a Fuel Handling Accident without credit for iodine filtration remain well within (<25%) of the NRC regulatory limits of 10 CFR [Part] 100. The predicted control room operator doses remain bounded by the limiting case for control room doses and within the regulatory limits of General Design Criterion [GDC] 19. In addition, the action to clarify the responses to NRC question 6.72 [of the original Final Safety Analysis Report] will not increase the probability or consequences of the Fuel Handling Accident.

No new accident types or equipment malfunction scenarios are introduced as a result of the clarification to the Virginia Power response to [NRC question] 6.72 or as a result of these changes in analysis methods or the proposed Technical Specifications changes to allow both personnel airlock doors to remain open during core alterations or fuel movement inside containment. Therefore, there is no possibility of an accident of a different type than any previously evaluated in the North Anna USFAR [Updated Final Safety Analysis Report].

There is no significnt reduction in the margin of safety. An evaluation of the Fuel Handling Accident doses at the EAB, the LPZ and to control room operators has been performedand it has been concluded that the acceptance criteria defined by GDC-19, 10 CFR 100, and the NRC Standard Review Plan will continue to be met.

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 23212.

NRC Project Director: David B. Matthews

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.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 13, 1995, as amended November 27, 1995

Brief description of amendments: The proposed amendments would permit the licensee to implement the performance-based option provided by 10 CFR Part 50, Appendix J, which allows leakage testing intervals to be based on system and component testing performance.

Date of publication of individual notice in Federal Register: December 12, 1995 (60 FR 63739)

Expiration date of individual notice: January 11, 1996

Local Public Document Room location: The University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

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 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 2 and 3, Maricopa County, Arizona

Date of application for amendments: October 3, 1995

Brief description of amendments: The amendments delete Sections 2.B.(7)(a) and (b) of

Facility Operating License No. NPF-51 (Unit 2) and Sections 2.b.(6)(a) and (b) of

Facility Operating License No. NPF-74 (Unit 3) relating to certain previous sale and leaseback transactions that were added by Amendment No. 3 for NPF-51 and Amendment No. 1 for NPF-74.

Date of issuance: December 8, 1995

Effective date: December 8, 1995

Amendment Nos.: Unit 2 - Amendment No. 91; Unit 3 - Amendment No. 74

Facility Operating License Nos. NPF-51 and NPF-74: The amendments revised the license.

Date of initial notice in Federal Register: November 8, 1995 (60 FR 56363) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 23, 1995

Brief description of amendments: The amendments revised the Technical Specifications to delete the applicability of the primary coolant water chemistry limits when the primary system is being chemically decontaminated and the reactor vessel is defueled.

Date of issuance: December 13, 1995

Effective date: December 13, 1995

Amendment Nos.: 180 and 211

Facility Operating License Nos. DPR-71 and DPR-62.

Date of initial notice in Federal Register: The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 14, 1995, as supplemented November 8, 1995.

Brief description of amendments: The amendments allow the use of an alternate zirconium based fuel cladding,

ZIRLO, and permit limited substitution of fuel rods with ZIRLO filler rods. In addition, a clarification and an editorial change have been included.

Date of issuance: December 19, 1995

Effective date: December 19, 1995

Amendment Nos.: 78 and 70

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 25, 1995 (60 FR 54716) The November 8, 1995 letter, provided clarifying information that did not change the scope of the September 14, 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 19, 1995No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

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: September 15, 1995.

Brief description of amendments: The amendments upgrade 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.'' The application dated September 15, 1995, contains some of the TSUP open items from previous Dresden and Quad Cities TS amendments issued by the NRC.

Date of issuance: December 19, 1995Effective date: Immediately, to be implemented no later than June 30, 1996.

Amendment Nos.: 145, 139, 167 and 163

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: October 5, 1995 (60 FR 52220) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 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.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 8, 1995

Brief description of amendment: The amendment revises Technical Specification (TS) 3.1.A.5 to revise the wording to allow a single train of Power-Operated Relief Valves (PORVs)/ Block Valves to be closed and deenergized indefinitely. The proposed change is administrative and is intended to correct inconsistencies between the intended operation of the PORVs/Block Valves and the language of the TSs.

Date of issuance: December 8, 1995

Effective date: As of the date of issuance to be implemented immediately.

Amendment No.: 185

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: NoThe Commission's related evaluation of the amendment, emergency circumstances and consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 8, 1995.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Ledyard B. Marsh

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 application for amendments: October 31, 1994

Brief description of amendments: The amendments remove the stroke times for the steam generator power operated relief valves from Technical Specification Tables 3.6-2a and 3.6-2b.

Date of issuance: December 18, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: Unit 1 - 139 - Unit 2 - 133

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8745) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: September 4, 1993, as supplemented by letters dated February 16, 1994, and August 4, 1995

Brief description of amendments: The license amendments revised the Arkansas Nuclear One Industrial Security Plan.

Date of issuance: December 19, 1995

Effective date: December 19, 1995

Amendment Nos.: 183 and 172

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the licenses.

Date of initial notice in Federal Register: November 8, 1995 (60 FR 56368) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 6, 1993, as supplemented by letters dated May 12, August 9, and September 18, 1995.

Brief description of amendment: The amendment changes the Appendix A TSs to allow installation of steam generator tube repair sleeves at the Waterford Steam Electric Station, Unit 3. The sleeves are designed and manufactured by Combustion Engineering Incorporated.

Date of issuance: December 14, 1995

Effective date: December 14, 1995, to be implemented within 60 days

Amendment No.: 117

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 19, 1994 (59 FR 2868) The May 12, August 9, and September 18, 1995, letters provided additional information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 7, 1993, as supplemented by letters dated February 8, 1994, and August 9, 1995.

Brief description of amendment: The amendment revised the license condition on physical security and approves the revision to Physical Security Plan for the Waterford Steam Electric Station, Unit 3.

Date of issuance: December 19, 1995

Effective date: December 19, 1995

Amendment No.: 118

Facility Operating License No. NPF-38. Amendment revised the license. The additional information contained in the supplemented letter dated August 9, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

Date of initial notice in Federal Register: March 30, 1994 (59 FR 14887) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

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

Brief description of amendments: The amendments consist of changes to the Technical Specifications relating to nuclear instrumentation system adjustments based on calorimetric measurements at reduced power levels.Date of issuance: December 12, 1995

Effective date: December 12, 1995

Amendment Nos. 180 and 174Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47617) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 26, 1995, as supplemented March 9 and May 24, 1995

Brief description of amendment: This amendment increases the allowable U-235 enrichment of fuel to be stored in the new and spent fuel storage facilities.

Date of issuance: December 15, 1995

Effective date: December 15, 1995

Amendment No.: 151

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 26, 1995 (60 FR 20517) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 24, 1995

Brief description of amendment: The amendment revised the Technical Specifications to reflect the approval for the River Bend Station to use 10 CFR Part 50, Appendix J, Option B for the containment leak rate testing.

Date of issuance: December 19, 1995

Effective date: December 19, 1995

Amendment No.: 84

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 8, 1995 (60 FR 56368) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1995.No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

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 application for amendments: May 25, 1995 (AEP:NRC:1200B)

Brief description of amendments: The amendments change the surveillance frequency for the manual actuation function for main steam line isolation from monthly to quarterly and delete obsolete footnotes associated with previous surveillance interval extensions from Unit 2 Table 4.3-2.

Date of issuance: December 13, 1995

Effective date: December 13, 1995, with full implementation within 45 days

Amendment Nos.: 204 and 189

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35081)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: August 8, 1995

Brief description of amendment: This amendment modifies the definitions of Transthermal (Condition 4), Hot Shutdown (Condition 5), and Hot Standby (Condition 6) reactor operating conditions. The Transthermal and Hot Shutdown Conditions are modified to establish an applicable range of subcriticality and be consistent with other Definitions. The wording of Hot Standby is modified to remove reference to control rod position, consistent with NUREG-1432, Standard Technical Specifications for Combustion Engineering Plants, Revision 1, dated April 1995.

Date of issuance: December 15, 1995
Effective date: As of the date of issuance, to be implemented within 30 days.
Amendment No.: 154
Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: October 11, 1995 (60 FR 52931) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1995.No significant hazards consideration comments received: No
Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 27, 1995
Brief description of amendment: The amendment revises Technical Specification (TS) 2.2 on chemical and volume control system (CVCS) to reformat and clarify the requirements and make them more consistent with the requirements of the Combustion Engineering Standard Technical Specifications (STS), as presented in NUREG-0212, Revision 2.
Date of issuance: December 12, 1995
Effective date: December 12, 1995
Amendment No.: 171
Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: August 2, 1995 (60 FR 39447) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 10, 1995, as supplemented by letter dated November 10, 1995.
Brief description of amendments: These amendments (1) modify the Susquehanna Steam Electric Station, Unit 1 and 2 Technical Specifications to extend the allowable out-of-service times (AOTs) for maintenance and repair and the surveillance test intervals (STIs) between channel functional tests for the following groups of instruments: reactor protection systems instrumentation (TS 3.3.1), isolation actuation instrumentation (TS 3.3.2), emergency core cooling system actuation instrumentation (TS 3.3.3), ATWS (anticipated transient without scram) recirculation pump trip system instrumentation (TS 3.3.4.1), end-of-cycle recirculation pump trip system instrumentation (TS 3.3.4.2), reactor core isolation cooling system (RCIC) actuation instrumentation (TS 3.3.5), control rod block instrumentation (TS 3.3.6), radiation monitoring instrumentation (TS 3.3.7.1), and feedwater/main turbine trip system actuation instrumentation (TS 3.3.90); (2) change the required actions and AOTs for the instruments listed above to make requirements consistent with supporting analysis in General Electric topical reports and change additional actions required to prevent extended AOTs from resulting in extended loss of instrument function; (3) change the required actions and AOTs for the instruments listed above for instrumentation associated with the ADS (automatic depressurization system), recirculation pump trip, and pump suction lineup for HPCI (high pressure core injection) and RCIC; (4) change applicability requirements and required actions for the reactor vessel water level-low, level 3 function that isolates the RHR (residual heat removal) system shutdown cooling system so that the function is required to be operable in operational conditions 3,4, and 5 to prevent inadvertent loss of reactor coolant via the RHR shutdown cooling system; (5) remove notes in Table 3.3.2-1, 3.3.2-2, and 4.3.1-1 related to maintenance on leak detection temperature detectors and remove the note toTS 3.3.6 for Unit 1 related to a previous relief from TS 3.0.4; and (6) reformat, renumber, and/or reword existing requirements to incorporate the changes listed above.
Date of issuance: December 18, 1995
Effective date: As of date of issuance and to be implemented within 30 days.
Amendment Nos.: 155 and 126
Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.
Date of initial notice in Federal Register: March 29, 1995 (60 FR 16194) The supplemental letter provided corrected TSs and did not change the original proposed no significant hazards consideration nor the Federal Register notice.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 1995No significant hazards consideration comments received: No
Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: September 26, 1995
Brief description of amendments: The amendments change the containment air lock door seal leakage rate from ''no detectable seal leakage'' to ''less than or equal to 0.01 L_a'' when the gap between the door seals is pressurized to greater than or equal to 10 psig for a period of not less than 15 minutes.
Date of issuance: December 8, 1995
Effective date: As of the date of issuance to be implemented within 30 days
Amendment Nos.: 118 and 109
Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.
Date of initial notice in Federal Register: November 8, 1995 (60 FR 56370) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 7, 1995 (TS 95-17)
Brief description of amendments: The changes relocate the heat flux hot channel factor penalty from Surveillance Requirement 4.2.2.2.e.1 to the Core Operating Limits Report and replace the methodology (WCAP-10216-P-A) listed in Technical Specification 6.9.1.14.a.2 with WCAP-10216-P-A, Revision 1A.
Date of issuance: December 11, 1995
Effective date: December 11, 1995
Amendment Nos.: 216 and 206
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.
Date of initial notice in Federal Register: August 30, 1995 (60 FR 45186) The Commission's related evaluation of the amendment is contained in a Safety

Evaluation dated December 11, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402No significant hazards consideration comments received: None

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: August 15, 1995 (TXX-95215)

Brief description of amendments: These changes relocated the Shutdown Margin limits from the Technical Specifications (TSs) to the Core Operating Limits Report (COLR). The changes were consistent with the intent of Generic Letter 88-16 which provides guidelines for the removal of cycle-specific parameter limits from the TSs.

Date of issuance: December 15, 1995

Effective date: December 15, 1995

Amendment Nos.: Unit 1 - Amendment No. 44; Unit 2 - Amendment No. 30

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52935) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Union Electric Company, Docket No. 50-483, Callaway Plant, Callaway County, Missouri

Date of amendment request: April 26, 1995

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.7.6 to reduce the upper limit on the flow rate through the control room filtration subsystem and adopts ASTM D-3803-1989 as the laboratory testing standard for control room filtration and control building pressurization charcoal adsorber. The amendment also revises the Bases for TS 3/4.7.6 to reflect the changes.

Date of issuance: December 20, 1995

Effective date: December 20, 1995, to be implemented within 30 days from the date of issuance.

Amendment No.: 106

Facility Operating License No. NPF-30. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1995 (60 FR 27345) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 14, 1995, as supplemented by letters dated July 13, 1995, and August 22, 1995.I11*Brief description of amendment:* The amendment revises Technical Specification (TS) 3.2.3, ''Nuclear Enthalpy Rise Hot Channel Factor,'' TS 6.9.1.9, ''Core Operating Limits Report,'' and the associated Bases sections. The revisions incorporate changes associated with the planned implementation of advanced nuclear and core thermal-hydraulic design methodologies licensed from Westinghouse Electric Corporation for core reload design, starting with Cycle 9.

Date of issuance: December 8, 1995

Effective date: December 8, 1995, to be implemented prior to restart from the eighth refueling outage, which is scheduled to begin in March 1996.

Amendment No.: 92

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39456) The August 22, 1995, supplemental letter forwarded the nonproprietary version of Wolf Creek Nuclear Operating Corporation's safety evaluation and analysis provided in the June 14, 1995, submittal and did not change the staff's original no significant hazards determination.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 locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 22, 1995

Brief description of amendment: The amendment revises the requirements of Technical Specification (TS) 3.3.1 and TS 3.3.2 and relocate Tables 3.3-2 and 3.3-5 and applicable Bases, which provide the response time limits for the reactor trip system (RTS) and the engineered safety features actuation system (ESFAS) instruments, from the TS to the Updated Safety Analysis Report (USAR). The licensee has stated that the next USAR change request will include these changes.

Date of issuance: December 12, 1995

Effective date: December 12, 1995, to be implemented within 60 days of issuance.

Amendment No.: 93

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49950) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1995.No significant hazards consideration comments received: No.

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

Dated at Rockville, Maryland, this 21st 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. 96–1 Filed 1–2–96; 8:45 am]

BILLING CODE 7590–O1–F

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company, (Zion Nuclear Power Station, Unit Nos. 1 and 2); Exemption

I

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Units 1 and 2 (the facilities). The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Lake County, Illinois.

II

In 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage,'' paragraph (a), in part, states that ''the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

In 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), it specifies that ''the licensee shall control all points of personnel and vehicle access into a protected area.'' Also, 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, ''receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area * * *.''

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing Zion Station.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same ''high assurance'' objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into Zion Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Zion Station.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving Zion Station.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving Zion Nuclear Power Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 66566).

Dated at Rockville, Maryland, this 26th day of December 26, 1995.

For the Nuclear Regulatory Commission.

Gail Marcus,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–00042 Filed 1–2–96; 8:45 am]

BILLING CODE 7590–01–P

[IA 95–061]

Gary A. Minnick; Order Prohibiting Involvement in NRC-Licensed Activities

I

On various dates in 1992 and 1993, Gary A. Minnick was employed by various contractors to perform rigging and scaffolding work at nuclear power plants licensed by the Nuclear Regulatory Commission (NRC or Commission), including Palo Verde, Beaver Valley, and North Anna. In each case, Mr. Minnick was granted

temporary unescorted access to these power plants on the basis of information he submitted on security questionnaires. 10 CFR 73.56 and 73.57 require, in part, that nuclear power plant licensees conduct access authorization programs for individuals seeking unescorted access to protected and vital areas with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including criminal history, and the decision to grant unescorted access authorization must be based upon the licensee's review and evaluation of all pertinent information developed.

II

In order to be certified for unescorted access at Palo Verde, Beaver Valley, and North Anna, Mr. Minnick was required to complete security questionnaires which included a request that he list all prior criminal arrests or charges and provide the final disposition of each such arrest or charge. Mr. Minnick completed a security questionnaire on September 21, 1992 to gain unescorted access to North Anna, on January 7, 1993 and March 12, 1993 to gain unescorted access to Beaver Valley, and on September 30, 1993 to gain unescorted access to Palo Verde. In each case, Mr. Minnick was asked to list all arrests and charges against him and the disposition of these arrests and charges, with the exception of juvenile offenses and traffic citations not involving reckless driving or alcohol.

Although Mr. Minnick listed one or two arrests on each of the forms he completed, he omitted from each of these forms several arrests and charges against him that occurred between 1971 and 1988 and that were required to be listed on the unescorted access authorization applications. Mr. Minnick also omitted potentially significant and material information associated with the arrests that he did list. Specifically, he consistently failed to disclose the fact that he was sentenced to one year in prison and served approximately 91 days after being convicted in 1988 of driving after being declared an habitual offender, which is a felony offense. Although the arrests and charges that Mr. Minnick listed varied from form to form, he failed to provide a complete list of his arrests and charges that were required to be listed on all of the involved forms.

In August 1994, the NRC's Office of Investigations (OI) began an investigation to determine whether Mr. Minnick deliberately falsified and/or omitted criminal history background information relevant to the granting of unescorted access. In a report issued in April 1995, OI concluded that Mr. Minnick had deliberately falsified his criminal history background information which was used, in part, as the basis for granting him unescorted access to four NRC-licensed nuclear power plants. On October 6, 1995, the NRC conducted a predecisional enforcement conference with Mr. Minnick in Rockville, Maryland, to assist in determining whether civil enforcement action against him was warranted.

During the enforcement conference, Mr. Minnick admitted that he had omitted arrest information from each of the forms, but denied that he did so deliberately. He stated at various times during the conference that: (1) He may have been rushed in completing the forms; (2) he believed that, by listing some arrest information, the remaining information would be discovered by the investigating agencies and that he believed a records check would be completed before he was granted unescorted access; (3) he thought that the forms required criminal background information only for the previous 5 years; (4) he completed the forms without the assistance of any records; (5) he didn't read all of the details in the application; and (6) he thought that by writing ''habitual offender'' everyone would know that this offense entailed a prison sentence. The NRC has considered these statements but on balance finds them not to be convincing because: (1) The questionnaires were clear in requesting information about all arrests; (2) Mr. Minnick has stated that he read and understood the language of what he was reading; (3) on some of the forms, Mr. Minnick listed arrests that went beyond the 5-year period he stated that he believed was required; (4) Mr. Minnick exhibited a reasonably good recollection of his arrest record in listing different arrests on the various forms that he completed, and (5) Mr. Minnick consistently failed to reveal the fact that he was sentenced to a year in prison for one offense, instead indicating that he had received other sanctions for that offense. During the enforcement conference, Mr. Minnick indicated that he now clearly understands the importance of reporting fully and accurately all information requested.

III

Based on the information described above, the NRC concludes that Mr. Minnick's omissions were deliberate and were in violation of 10 CFR 50.5(a)(2), which prohibits individuals from deliberately providing information to a licensee or a contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. His omissions were material because, as indicated above, licensees are required to consider arrest information in making unescorted access determinations.

The NRC must be able to rely on licensees, contractors and their employees to provide information that is complete and accurate in all material respects. This is essential with respect to access authorization programs at nuclear power plants because temporary access determinations are made on the basis of information provided by individuals prior to completion of background records check and because the purpose of such programs is to assure the trustworthiness and reliability of individuals granted access. Mr. Minnick's deliberate omissions, which occurred on multiple occasions, raise serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees and their contractors, and raise doubts about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements if Mr. Minnick were permitted at this time to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Minnick be prohibited from involvement in licensed activities, including obtaining unescorted access at a licensed facility, for a period of one (1) year from the date of this Order and that for a period of one (1) year following this prohibition period Mr. Minnick be required to inform the NRC if he accepts employment with any employer that would involve work in NRC-licensed activities.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5, it is hereby ordered, effective immediately, that:

A. For a one-year period from the date of this Order, Mr. Gary A. Minnick is prohibited from engaging in NRC-licensed activities, including obtaining unescorted access at a licensed facility. For the purpose of this paragraph, NRC-licensed activities include licensed activities of: (1) an NRC licensee; (2)

an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

B. For a one-year period following the one-year prohibition under paragraph A above, Mr. Minnick shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities as defined in Paragraph A above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, if he accepts employment with any employer that would involve work in NRC-licensed activities. The notice shall include the name, address, and telephone number of the employer. In the first notification, Mr. Minnick shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Minnick of good cause.

V

In accordance with 10 CFR 2.202, Mr. Minnick must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of this Order. The answer may consent to the conditions of this Order. The answer may also request a hearing on this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and include a statement of good cause for the extension.

Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Minnick or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, Suite 400, 611 Ryan Plaza, Arlington, Texas 76011, and to Mr. Minnick if the answer or hearing request is by a person other than Mr. Minnick. If a person other than Mr. Minnick requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Minnick or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 22nd day of December 1995.

James L. Milhoan

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 96–00041 Filed 1–2–96; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATE: January 31, 1996, 8:30 a.m.–5:00 p.m.

PLACE: Stouffer Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC, 20036.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Wednesday, January 31, 1996

8:30 a.m.	Call to order opening remarks
8:35 a.m.	Public comment
9:05 a.m.	Discussion of interim report
10:30 a.m.	Break
12:00 p.m.	Lunch
1:15 p.m.	Discussion of interim report
3:30 p.m.	Break
3:45 p.m.	Discussion of interim report
5:00 p.m.	Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Miles W. Ewing, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005,Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: December 8, 1995.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–00031 Filed 1–2–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36639; International Series Release No. 911; File No. SR-Amex-95–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Commodity Indexed Securities

December 27, 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 11, 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 approve for listing and trading under Section 107 of the Amex Company Guide commodity indexed preferred or debt securities (''ComPS''), as described below.

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 Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107 of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading under Section 107 of the Company Guide commodity indexed preferred or debt securities.[1] Each issue of the proposed securities will meet the existing size and distribution requirements of Section 107. The issuers of such securities also will meet the existing requirements under Section 107.

Holders of ComPs generally will receive a dividend or interest as applicable on the face value of their securities. The frequency and rate of the dividend or interest payment will vary from issue to issue based upon prevailing interest rates and other factors. In addition, investors will receive at maturity a payment linked to the price of a single commodity in accordance with the following formula:

Face Amount × (Ending Commodity Price/Beginning Commodity Price)

Commodity prices will be determined in a manner described in greater detail within. In addition, commodity prices for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked commodity over at least a ten business day period. The securities will have a term of from two to ten years. Holders of the securities will have no claim to any of the underlying physical linked commodities. The Exchange anticipates that the issuer will link different issues of ComPS to the following commodities: West Texas Intermediate (''WTI'') crude oil, natural gas, unleaded gasoline, heating oil, aluminum (''Al''), copper (''Cu''), zinc (''Zn''), nickel (''Ni''), gold, silver and platinum.

The prices for the commodities linked to the proposed ComPS will be based upon: (i) London Metal Exchange (''LME'') closing prices for the futures contracts expiring the third Wednesday of March, June, September and December (with respect to the linked base metals); (ii) New York Mercantile Exchange (''NYMEX'') official settlement prices for the near term futures contract expiring every month (with respect to the linked energy commodities); (iii) NYMEX official settlement prices for the platinum contract expiring January, April, July and October; (iv) Commodity Exchange (''COMEX'') official settlement prices for the gold contract expiring February, April, June, August and December; and (v) COMEX official settlement prices for the silver contract expiring March, May, July, September and December. These prices are widely reported by vendors of financial information and the press. The following charts describe the linked contracts:

No.	Official commodity name & units	Exchange	Units per contract	Contract used in index
1	Aluminum $/MT (Metric Tons)	LME	25 tons	Third Wednesday of Mar., Jun., Sep. and Dec.
2	Copper $/MT	LME	25 tons	Third Wednesday of Mar., Jun., Sep. and Dec.
3	Nickel $/MT	LME	6 tons	Third Wednesday of Mar., Jun., Sep. and Dec.
4	Zinc $/MT	LME	25 tons	Third Wednesday of Mar., Jun., Sep. and Dec.
5	Heating Oil #2 $/gal	NYMEX	42,000 gal	Every month.
6	Natural Gas $/MM BTU	NYMEX	10,000 MM BTU	Every month.
7	Unleaded Gas $/gal	NYMEX	42,000 gal	Every month.
8	WTI Light Sweet Crude $/BBL	NYMEX	1,000 bbl	Every month.
9	Platinum $/troy oz	NYMEX	50 troy oz	Jan., Apr., Jul., Oct.
10	Gold	COMEX	100 troy oz	Feb. Apr., Jun., Aug. and Dec.
11	Silver	COMEX	5,000 troy oz	Mar., May, Jul., Sep. and Dec.

[1] The Underwriter of the proposes securities has advised the Exchange that the securities will comply with the ''hybrid exemption'' of the Commodity futures Trading Commission (''CFTC'') under 17 CFR Part 34. The underwriter has further advised the Exchange that it has presented a description of the structure and sample term sheet of the ComPs product to the staff of the CFTC, who have raised no objection to the structure.

Commodity	Avg. daily volume (in contracts)	Avg. open interest (in contracts)
Al	58,417	257,886
Cu	68,945	207,748
Ni	13,620	58,515
Zn	21,212	100,518
Heating Oil	36,184	159,614
Natural Gas	25,495	130,255
Unleaded Gas	30,331	93,225
WTI	107,654	411,483
Gold	33,860	155,347
Silver	23,954	120,027
Platinum	3,572	23,239

The value of the linked commodities will be calculated using one of three pricing methodologies, as described below; (1) Excess Return, (2) Total Return or (3) Price Return methodologies.

a. Excess Return

When the Excess Return methodology is employed, it is anticipated that holders of the proposed ComPS will realize a return on their investment equivalent to a trading strategy that holds a fully collateralized near term commodity futures contract for the linked commodity and, near the expiration of the contract, rolls, the position into the next nearest designated contract. To minimize possible pricing volatility arising from conducting the ''roll'' on a single business day, the substitution of the new contract for the old will be accomplished over a five business day period in increments of 20% of the index value. For example, the index change on the day immediately following the first roll is 80% of the old contract change plus 20% of the new contract change. On the next day, the index change is 60% old contract and 40% new contract and so forth until after the last roll day the index change is now 100% the new contract change. For energy commodities, the ''roll'' will be conducted each month. For base and precious metals, due to the absence of a designated contract for each month, the ''roll'' will be conducted periodically into the designated contract. Rolls for all commodities will begin on the fifth business day of the month. If a market disruption (*e.g.*, a limit price move, no trading or limited trading) occurs on a roll day, then the affected commodity will not roll on that day, and the volume to roll will accumulate and roll on the next available day.

The Excess Return methodology for calculating the value of the linked commodity will permit investors to realize the return on holding a continuous unleveraged investment in the nearby futures contract. The investment return of this strategy can be characterized as the sum of ''price'' return and ''roll'' return and is simply the return from holding a continuous position in nearby futures contracts and, as the contract nears expiration, selling it and reinvesting all proceeds into the next designated contract. Price return is the return that arises solely from changes over time in the price of the nearby contract. Thus, if on the first day of a given month the price of the nearby contract is $15.00, and on the 30th day of such month the price of the contract is $15.50, the investor in such contract has earned a price return of 3.3% ($0.50/$15 or 3.33%). Roll return represents the yields which are potentially available as a result of the differential between the prices for shorter-dated commodity futures positions and the prices for longer-dated commodity future positions. The price of the longer-dated position may be higher or lower than the price of the shorter-dated position based on a variety of factors, including the cost of transportation, storage and insurance of commodities, the expectations of market participants with respect to future price trends and general supply and demand trends.

Many commodity markets, including those for base metals and energy products, have historically been in backwardation for extended periods (*i.e.*, the nearby futures contracts are more expensive than longer dated contracts). This creates an opportunity to increase the return available through an investment in such commodities by establishing longer-dated positions in the commodities and continuously ''rolling'' such positions forward as they approach expiration. With the passage of time, longer-dated positions replace expiring shorter-dated positions. Positions that were formerly longer-dated but which have become shorter-dated positions are rolled forward and sold, with the proceeds used to purchase longer-dated replacement contracts. This process results in the realization of the roll return. However, if the prices for shorter-dated positions are less than the prices for longer-dated positions (a condition referred to as ''contango'') the investor may bear a cost with rolling futures positions forward, even where prices for shorter-dated positions remain constant or increase. This potential cost arises from the fact that as longer-dated contracts become shorter-dated contracts and then approach expiration, the prices of such contracts may decrease relative to the prices for the same contract when it was further away from expiration. Thus, as the maturing contracts are sold and rolled into longer-dated positions, the investor realizes a relatively smaller amount of proceeds, and must purchase the newly acquired longer dated futures contract at a higher price.

The example that follows illustrates the calculation of Excess Return as the sum of price and roll return. In the example, spot prices move from $15 to $15.50 over one month, and the one month second nearby contract moves from 14.40 to $15 (*i.e.*, the price curve remains in a constant $0.50 backwardation). Holding period Excess Return, therefore, is ($15.50–$14.50)/$14.50 or 6.9%.

CALCULATING EXCESS RETURN IN A BACKWARDATED MARKET

	Aug. 1st	Sept. 1st
1st Nearby Contract and Price	Sep. $15.00	Oct. $15.50
2nd Nearby Contract and Price	Oct. $14.50	Nov. $15.00
P/L on Oct Position Initiated Aug 1st		$1.00
Holding Period Spot Return		3.3% (on Sep. contract)
Holding Period Excess Return		6.9% (on Oct. contract)

b. Total Return

As stated above, the proposed securities also may use a ''Total Return'' methodology to value the linked commodities. The Total Return methodology simply adds the element of return arising from an investment in U.S. Treasury bills to the value of the linked commodity as calculated by the Excess Return methodology described above. The element of return arising from and investment in Treasury bills is referred to as collateral return (''collateral return''). Thus, Total Return equals Excess Return plus an interest

rate equivalent to the U.S. Treasury bill rate.

If the Total Return methodology is used, securities will not have a separate dividend or interest payment, or if they do have a separate dividend or interest payment, it will be substantially less than if the Excess Return methodology were used. The return based upon the Treasury bill rate will be calculated using a 13 week T-bill yield, compounded daily at the decompounded discount rate of the most recent weekly U.S. Treasury bill auction as found in the H.15 (519) report published by the Board of Governors of the Federal Reserve System, on the full value of the commodity. Interest will accrue on an actual day basis over weekends and holidays at the previous day's rate.

c. Price Return

If a Price Return methodology is employed, the value of the linked commodity at maturity of the ComPS will be determined by reference to the price of a specified near term futures contract. The use of the Price Return methodology eliminates the elements of roll and collateral return from the valuation of the linked commodities.[2] If the Price Return methodology is used to determine the value of the linked commodity, the holders of the proposed ComPS generally will receive a dividend or interest payment on the face value of their securities, the frequency and rate of which will vary from issue to issue depending upon prevailing interest rates and other factors.

It is anticipated that the contract underlying a particular ComPS will remain unchanged during the term of the instrument. Certain developments, however, may necessitate changes with respect to the underlying contract.[3] Decisions regarding such changes will be determined by a policy committee consisting of employees of the commodities and research areas of the underwriter or its affiliates as well as independent industry and academic experts. Employees of the underwriter or its affiliates will be restricted to an advisory, non-voting membership on the committee. Members of the policy committee will be prohibited from trading ComPS.

If it becomes necessary to choose a replacement contract, the ''new'' replacement contract will meet the following criteria: (i) it will be priced in U.S. dollars, or if priced in a foreign currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible into U.S. currency, (ii) it will be traded on a regulated futures exchange in the U.S., Canada, U.K, Japan, Singapore or an O.E.C.D. country,[4] and (iii) it will have a minimum annual volume of 300,000 contracts or $500 million. The underwriter will immediately notify the Exchange and vendors of financial information in the event that there is a change in the futures contract underlying a particular series of ComPS.

The Amex represents that it is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on the LME pursuant to its information sharing arrangement with the Securities and Futures Authority (''SFA'') in the United Kingdom and through the Intermarket Surveillance Group (''ISG'')[5]. The Exchange also is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on NYMEX or COMEX pursuant to its information sharing agreement with NYMEX. In addition, the Exchange is able to obtain market surveillance information, including customer identity information, regarding transactions on several other futures exchanges in the U.S. and abroad through the ISG.

In the event that the policy committee determines that the contract underlying a ComPS should be changed, and it identifies an appropriate benchmark replacement contract, the substitution of the new contract for the old only will be done where: (1) The Exchange has established a comprehensive information sharing agreement with the market or self-regulator for the replacement contract,[6] or (2) the SEC has established suitable alternative arrangements with an appropriate regulator of the market for the replacement contract. When there is no suitable benchmark replacement contract or, there is suitable benchmark contract but the Exchange's or the Commission's information sharing arrangements do not meet the above criteria, then the affected ComPS either will be called by the issuer or the payment to be made to holders at maturity will be fixed as of such time using prices derived from the old underlying contract, and thereafter the principal amount will not fluctuate throughout the term of the instrument as a result of the price of a linked commodity.

The underwriter intends to retain the services of an independent calculation agent to compute the value of the linked commodities in accordance with the protocols described above if a Total Return or an Excess Return methodology is employed since the value of the linked commodities will vary from the prices of the relevant futures contracts then trading due to the incorporation of roll and collateral return into the value of the linked commodities. With respect to the linked energy and precious metal commodities (*i.e.*, those commodities traded in the U.S.), the value of such commodities for purposes of the proposed securities will be calculated every 60 seconds and

[2] When a Price Return methodology is utilized, the Exchange believes the proposed commodity indexed preferred securities are in some respects similar to New York Stock Exchange (''NYSE'') listed preferred securities that currently trade under the symbols FCX B, FCX C and FCX D. These NYSE listed securities pay a floating quarterly dividend expressed in terms of a fraction of an ounce of gold or silver, and the value of these securities at maturity also is expressed as a fraction of an ounce of gold or silver. For example, the dividend on the FCX B preferred equals .000875 ounces of gold per share, and its maturity value is .1 ounce of gold per share. For purposes of these securities, the price of gold and silver is determined by reference to the London fixing for these metals. A total of 15,065,580 shares of these securities with an original issue price of approximately $500 million were listed between August 1993 and July 1994.

[3] Such developments could include, among other things, changing liquidity conditions or the discontinuation of existing contracts or the emergence of new ''benchmark'' contracts for the particular linked commodity.

[4] The O.E.C.D. (Organization of Economic Cooperation and Development) consists of the following countries: the U.S., Japan, Germany, France, Italy, U.K., Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

[5] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The domestic members of the ISG are the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. The SFA is an affiliate member of ISG.

[6] The Exchange currently has information sharing arrangements that qualify as comprehensive information sharing agreements with the following futures markets and self-regulators: Chicago Board of Trade, Chicago Mercantile Exchange, London International Financial Futures and Options Exchange, Montreal Exchange, New York Futures Exchange, New York Mercantile Exchange and the U.K. Securities and Futures Authority. From time to time, moreover, the Exchange may enter into new information sharing arrangements that qualify as comprehensive information sharing agreements with securities and futures markets and self-regulators other than those with which the Exchange currently has such agreements.

disseminated to vendors of financial data via the Exchange's Network B. With respect to base metals (*i.e.*, those traded on the LME), the value of the commodities will be continuously disseminated on Network B, but will be updated only once per day during U.S. market hours as the market for the relevant contracts does not trade in a continuous fashion when the U.S. securities markets are open.

Since commodity returns historically have been negatively correlated with financial assets, the Exchange believes that the ownership of ComPS (although their return is uncertain) will help to diversify a portfolio of financial instruments. The proposed ComPS also will benefit the producers, consumers and dealers of the underlying commodities by permitting them, through the issuance of ComPS, to raise low cost capital.

Returns to investors in ComPS are unleveraged with neither a cap nor a floor. There is an element of derivative pricing, however, with respect to the calculation of the final payment. The Exchange, accordingly, will require members, member organizations and employees thereof to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer. In addition, members, member organizations or employees thereof recommending a transaction in ComPS would be required: (1) To determine that the transaction recommended is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. The Exchange will distribute a circular to its membership prior to trading ComPS providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in such securities and highlighting the special risks and characteristics thereof.

ComPS will be subject to the equity margin and trading rules of the Exchange except that, where ComPS are issued as debt in denominations with a face value of $1,000 or greater, they will be traded subject to the Exchange's debt trading rules.

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 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 Amex. All submissions should refer to File No. SR–Amex–95–50 and should be submitted by January 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–35 Filed 1–2–96; 8:45 am]

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[Release No. 34–36635; File No. SR–CBOE–95–52]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Suspension of the Ten Contract Firm Quote Requirement During Fast Markets

December 22, 1996.

I. Introduction

On September 5, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with 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] to amend CBOE Rules 8.51, 6.6 and 6.20 Interpretation .09 to: (i) Remove the pilot status of Rule 8.51; (ii) conform Rule 8.51 to the existing practice of permitting, but not requiring, Floor Officials to suspend the ten contract firm quote requirement of Rule 8.51(a) during a fast market; (iii) expand the group of persons with authority to grant suspensions, exemptions or exceptions to Rule 8.51 (currently only the Market Performance Committee) to any two Floor Officials, (iv) specify that when a fast market is declared any two Floor Officials have the power to suspend the firm quote requirement of Rule 8.51 and turn off the Retail Automatic Execution System (''RAES''); (v) allow the senior person then in charge of the Exchange's Control Room to suspend the ten contract firm quote requirement under certain circumstances; and (vi) amend Rule 6.20 Interpretation .09 to clarify the instances

[7] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19(b)–4.

where a member of the Market Performance Committee may perform the functions of a Floor Official.

Notice of the proposal was published for comment and appeared in the Federal Register on October 25, 1995.[3] The Commission received one comment letter concerning the proposed rule change.[4] This order approves the Exchange's proposal.

II. Description of the Proposal

The purposes of the proposal are: (1) To approve Rule 8.51 (''ten contract firm quote requirement'') on a permanent basis, removing the current pilot program designation, (2) to conform Rule 8.51 to the existing practice of permitting, but not requiring, Floor Officials to suspend the ten contract firm quote requirement of Rule 8.15(a) during a fast market, (3) to expand the group of persons with authority to grant suspension, exemptions, or exceptions to the firm quote requirement from the Market Performance Committee members to any two Floor Officials, (4) to specify that when a fast market is declared pursuant to Rule 6.6, two Floor Officials have the power to suspend the firm quote requirement of Rule 8.51 and turn off RAES, (5) grant the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement, if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes, and (6) to amend Rule 6.20 Interpretation .09 to clarify that the instances where a member of the Market Performance Committee may perform the functions of a Floor Official include enforcing policies and acting pursuant to rules related to RAES, fast markets, and the ten contract firm quote requirement.

Rule 8.51(a) requires a trading crowd to sell (buy) at least ten contracts at the offer (bid) which is displayed when a buy (sell) customer order reaches the trading crowd. Initially, this rule was adopted as an Exchange pilot program to be monitored and enforced by the Exchange's Market Performance Committee.[5] The ten contract firm quote requirement has been in effect since 1989, and the Exchange believes it is now time to remove the designation as a pilot program. The Exchange believes that the ten contract firm quote requirement has been beneficial to investors and has provided greater liquidity to the markets by requiring that the orders of non-broker dealer customer be filled for at least ten contracts at the displayed quote price. The Exchange further represents that trading crowds are aware of the requirements of Rule 8.51 and have generally been able to meet its requirements.[6]

Rule 8.51(a)(2) currently provides that the ten contract firm quote requirement will be in effect unless a fast market has been declared. Although not presently explicit in the rules, it is current practice not to automatically suspend this requirement when a fast market has been declared. The Exchange proposes to amend Rule 8.51(a)(2) and add Interpretation .07 to clarify that the ten contract firm quote requirement in paragraph (a) of Rule 8.51 is not automatically suspended when a fast market is declared. Instead, Interpretation .07 would provide that any two Floor Officials have the power, but are not required, to suspend this requirement when a fast market has been declared.

CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether the ten contract firm quote requirement should be suspended in a fast market. This permits the firm quote requirement to remain in place for the benefit of non-broker dealer customers even when a fast market has been declared, except in those specific instances where two Floor Officials have determined that the ten contract firm quote requirement should be suspended.

As set forth in Interpretation .09 to Rule 6.20, members of the Market Performance Committee may perform the functions of Floor Officials for the purpose of enforcing trading conduct policies. As Rule 8.51 is presently written, only the Market Performance Committee or Market Performance Committee members acting as Floor Officials may grant exemptions from, or make exceptions to, Rule 8.51. CBOE believes Floor Officials from the Floor Officials Committee are also qualified to make decisions regarding exemptions from, and exceptions to Rule 8.51. CBOE sees no reason to limit this power to members of the Market Performance Committee. CBOE also believes that the power to suspend Rule 8.51 once a fast market is declared should be granted to *any* two Floor Officials, whether they are members of the Market Performance Committee or members of the Floor Officials Committee.

CBOE's proposal would grant equal power to members of the Floor Officials Committee and members of the Market Performance Committee to act under Rule 8.51 regarding suspensions, exceptions to or exemptions from the firm quote requirement. It is important for a timely decision to be made once a fast market has been declared or other situations have arisen which warrant the suspension of the firm quote requirement, or an exemption or exception to this requirement. CBOE believes that it could be detrimental to a fair and orderly market to delay action until a member of the Market Performance Committee could be found to make such a decision when members of the Floor Officials Committee might already be present at the trading post. To implement CBOE's intention that *any* two Floor Officials may make decisions under Rule 8.51, including members of the Market Performance Committee acting as Floor Officials and members of the Floor Officials Committee, the proposal would amend Rule 6.20, Interpretation .09, amend Rule 8.51(a)(3), and add Interpretation .06 to Rule 8.51. In addition, the proposal would amend Rule 8.51 to clarify that in deciding whether to grant a suspension, exception to or exemption from the firm quote requirement, Floor Officials consider whether to do so would be in the interest of a fair and orderly market.

Because Rule 8.51 requires that Exchange market makers honor non-broker dealer customer orders at the displayed quote for up to ten contracts, it is important that the displayed market quote be accurate. Otherwise, market makers would be forced to trade ten contracts at an inaccurate or ''stale'' quote price. Therefore, if there is a system malfunction or other circumstance which interferes with the Exchange's ability to disseminate the then current and accurate quote, it is important for the Exchange to be able to act quickly to suspend the market

[3] *See* Securities Exchange Act Release No. 36391 (October 18, 1995), 60 FR 54737.

[4] The Security Traders Association (''STA'') supports the proposal to codify the Exchange's authority to suspend the ten contract firm quote requirement during a fast market because it will permit the market to react promptly to systems malfunctions, events in the market, or other circumstances which interfere with the Exchange's ability to disseminate current and accurate quotes. The STA believes that a self-regulatory organization must have the power and authority to modify, within limits, any technological or operational procedure immediately upon determining that it does not fulfill its intended purpose. *See* Letter from William R. Rothe, Chairman, and John L. Watson, III, President, STA, to Jonathan G. Katz, Secretary, Commission; dated November 15, 1995 (''Comment Letter'').

[5] *See* Securities Exchange Act Release No. 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989).

[6] *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated December 14, 1995 (''CBOE Letter'').

maker's obligations under Rule 8.51 until the difficulty is resolved. To implement such a quick response, the proposal would further amend Rule 8.51 to grant to the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement contained in Rule 8.51(a) if there is a system malfunction or other circumstance that affects the Exchange's ability to disseminate or update market quotes. After exercising such authority, the senior person would need to immediately seek approval of two Floor Officials, who would be empowered to confirm or overrule the suspension.

It is important for the Control Room to have this power to suspend the firm quote requirement, since the Control Room would most likely learn of the system malfunction before Floor Officials or other Exchange staff. Consequently, the Control Room could act in a timely manner to prevent market makers from having to trade at ''stale'' market quotes. If the Control Room does invoke its power to suspend the firm quote requirement, then the Control Room would disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. This would inform non-broker dealer customers that their orders would not necessarily be filled at that displayed bid or offer. Once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room or two Floor Officials would be required to end the suspension of the firm quote requirement.

As it is presently written, Rule 6.6(b) provides that the two Floor Officials declaring a fast market have the power to take a number of specified actions and more generally to take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market. When a fast market has been declared, pursuant to these general powers, Floor Officials will often, in the interest of maintaining a fair and orderly market, suspend the ten contract firm quote requirement of Rule 8.51. This decision to suspend the firm quote requirement is made often during a fast market because the displayed quote is not current or accurate due to the influx of orders or other unusual circumstances. Therefore, market makers should not be forced to trade ten contracts at an inaccurate quote. In order to notify members and the public that, during a fast market, Floor Officials may suspend the firm quote requirements, CBOE proposes to specify in Rule 6.6(b) that when a fast market is declared, Floor Officials have the power to suspend the ten contract firm quote requirement of Rule 8.51.

For the same reasons, after a fast market declaration, another action Floor Officials may take in the interest of maintaining a fair and orderly market is to turn off RAES. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for the bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade. Trades are assigned to these participating market makers on a rotating basis. Therefore, by agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important for the prevailing market quote to be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote. During a fast market, often the influx of orders is greatly increased or other unusual circumstances exist that affect the accuracy of the prevailing market quote. For this reason, Floor Officials, acting under the general powers of Rule 6.6(b), may turn off RAES to prevent market makers from being assigned trades based on inaccurate market quotes. In order to notify members and the public that such action may be taken in a fast market, CBOE proposes to amend Rule 6.6 to specify that Floor Officials have the power to turn off RAES after a fast market has been declared.

If RAES is turned off because of the circumstances described above, the orders that would have been routed to RAES will be automatically re-outed to either the Public Automated Routing System (''PAR'') workstation [7] or floor broker printer in the trading crowd, or to the appropriate member firm booth. Where the order is re-routed will depend upon parameters set by member firms for their customers' orders prior to entering the orders onto RAES.[8]

Furthermore, as Rule 6.6(b) is presently written, it could be interpreted that only the same two Floor Officials who declared the fast market have the power to take the other actions specified in Rule 6.6(b). CBOE's practice has been that *any* two Floor Officials have the powers specified in Rule 6.6(b), not just the specific two individuals who declared the fast market. Therefore, CBOE proposes an amendment to Rule 6.6(b) to clarify that any two Floor Officials have the powers specified in 6.6(b).

CBOE believes that members of the Market Performance Committee, who perform Floor Officials functions, as well as Floor Officials who are members of the Floor Officials Committee, are equally qualified to make decisions regarding Rule 6.6. To clarify that members of the Market Performance Committee may also act pursuant to Rule 6.6, the proposal would amend Rule 6.20 Interpretation .09 to specify that the Floor Official functions that Market Performance Committee members may perform include acting pursuant to rules related to fast markets and RAES. Again, when circumstances arise which might require the declaration of a fast market, it is important for timely decisions to be made regarding the declaration of a fast market and other related decisions specified in Rule 6.6. CBOE believes that it would be detrimental to a fair and orderly market to delay action until a Floor Official from the Floor Officials Committee is found to make such decisions when members of the Market Performance Committee might already be present at the trading post.

The Exchange believes that the proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that the proposal is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by: (1) Enabling any two Floor Officials to evaluate and consider market conditions and circumstances in determining whether to suspend the firm quote requirement of Rule 8.51 during a fast market; (2) clarifying the powers of Market Performance Committee members and specifying the powers Floor Officials may invoke during a fast market; and (3)

[7] A PAR workstation is an automated, computer-based workstation that provides users with the ability to execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating the delay inherent in a keyboard-based system. Telephone conversation between Anthony Montesano, Manager, Trading Operations, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on December 21, 1995.

[8] According to CBOE, when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conversation between Edward Joyce, CBOE, and John Ayanian, OMS, Market Regulation, Commission, on December 21, 1995.

granting certain authority to the senior person then in charge of the Control Room to suspend the firm quote requirement when there has been a system malfunction affecting the dissemination or updating of quotes.

The Exchange also believes that the entire proposal is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

III. Commission Finding and Conclusions

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, the requirements of Section 6(b)(5) of the Act.[9] Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

For purposes of the CBOE's proposal to permanently approve the ten contract firm quote pilot program, the Commission reasserts its initial position regarding the benefits of the rule on the CBOE.[10] Specifically, the permanent approval of the ten contract firm quote requirement rule is consistent with Section 6(b)(5) of the Act in that the rule results in improved market quality and better market maker performance than would otherwise occur. The ten contract firm quote requirement should continue to result in better executions of small customer orders by ensuring greater depth of CBOE options markets.

The Commission also believes that the ten contract firm quote requirement encourages market makers to become more competitive in making size markets, thereby facilitating transactions in securities, contributing to a more free and open market, and improving the quality of the CBOE's public customers' options markets.

The Commission also believes that it is appropriate for the Exchange to conform its rules to the current practice not to automatically suspend the ten contract firm quote requirement when a fast market has been declared.[11] Accordingly, the Commission believes that it is appropriate to add Interpretation .07 to Rule 8.51 to grant any two Floor Officials the authority, but not require them, to suspend the ten contract firm quote requirement during a fast market. The Commission agrees with the CBOE that, during a fast market, Exchange officials should have the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether the ten contract firm quote requirement should be suspended. Both amended Rule 8.51(a)(2) and proposed Interpretation .07 to Rule 8.51 adequately address these issues and should help minimize adverse impact on non-broker dealer customers during a fast market when two Floor Officials determine that market conditions and circumstances do not warrant such action.

The Commission also believes it is appropriate to allow the Exchange to allow any two Floor Officials, including members of the Market Performance Committee acting as Floor Officials and members of the Floor Officials Committee, to grant suspensions, exemptions, or exceptions to the ten contract firm quote requirement under Rule 8.51. Specifically, proposed rule change will (i) allow members of the Market Performance Committee to retain authority to grant exemptions from, or to suspend, the ten contract firm quote requirement under Rule 8.51, and grant Floor Officials that same authority; and (ii) clarify that the authority of Market Performance Committee members under Interpretation .09 under Rule 6.20 includes enforcing policies and acting pursuant to rules related to RAES and fast markets.[12] The Commission believes that the Exchange adequately addresses these issues by amending (1) Rule 8.51(a)(3), (2) Interpretation .06 to Rule 8.51, (3) Interpretation .09 to Rule 6.20, and (4) Rule 6.6(b)(iv) as set forth above in Section II.

In regard to RAES orders during a fast market, the Commission believes that it is appropriate to grant any two Floor Officials, pursuant to proposed Rule 6.6(b) (v), the express authority to turn off RAES after a fast market declaration if in the interest of maintaining a fair and orderly market. Floor Officials have the general authority to turn off RAES during unusual market conditions pursuant to current Rule 6.6(b)(v). Current Rule 6.6 (b)(v) allows Floor Officials to ''[t]ake such other actions as are deemed necessary in the interest of maintaining a fair and orderly market.'' The Commission agrees with the Exchange that by expressly granting its Floor Official the discretion to turn off RAES during a fast market, Exchange members and the public will be properly notified that such action may be taken when a fast market has been declared.

The Commission also believes that it is appropriate to allow the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement if there is a systems malfunction or other circumstance that affects the Exchange's ability to disseminate or update market quotes. The type of circumstances that might impair the Exchange's ability to disseminate or update market quotes in a timely and accurate manner, include, but are not limited to, outages of the Exchange's autoquote system, communication disruptions between the Exchange and the Processor for the Options Price Reporting Authority, and the unavailability of market data from the underlying market and the CBOE.[13] The Commission notes that the proposed rule change requires the senior person in charge of the Exchange's Control Room to immediately seek approval from two Floor Officials after exercising such authority. The Commission believes that this proposed rule change provides a reasonable mechanism for the CBOE to suspend the market maker's obligations under Rule 8.51 when the Exchange is unable to disseminate the then current and accurate quote.

It is therefore ordered, pursuant to section 19(b) (2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–95–52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00020 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989).

[11] *See* CBOE Rule 8.51(a)(2).

[12] *See* CBOE Letter, *supra* note 6.

[13] *See* CBOE Letter, *supra* note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[Release No. 36640; File No. SR–MSRB–94–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Relating to the Settlement Dates for ''When, As and If Issued'' Transactions, the Confirmation of Inter-Dealer Transactions, and Providing New Issue Information to Registered Securities Clearing Agencies

December 27, 1995.

On August 15, 1995, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–95–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on October 16, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposal

On February 28, 1995, the Commission approved amendments to MSRB rules G–12(b) and G–15(b) redefining regular-way settlement as three rather than five business days after the trade date (''T+3 settlement'').[3] Since that time, the MSRB has been reviewing its rules to determine other appropriate changes to accommodate T+3 settlement within the municipal securities market.

Consequently, the MSRB is amending rules G–12 and G–34 to modify the requirements for setting settlement dates for ''when, as and if issued'' (collectively ''when-issued'') transactions and for the confirmation of inter-dealer transactions. The MSRB also is modifying and reorganizing the requirements for providing new issue information to registered securities clearing agencies. Finally, the MSRB is making technical changes to rule language to clarify the different processing requirements for transactions that are eligible for automated comparison through the facilities of a registered clearing agency as opposed to those that are not eligible. The MSRB designed these amendments to advance T+3 settlement in the municipal securities market, to generally facilitate automated clearance and settlement of municipal securities, and to support the MSRB's Transaction Reporting Program.[4]

MSRB rule G–12(f) requires all inter-dealer transactions eligible for automated comparison to be compared in an automated comparison system operated by a registered clearing agency. Revised MSRB rule G–12(b) requires that the settlement date for when-issued transactions eligible for automated comparison shall not be earlier than two business days after notification of the initial settlement date for the issue is provided by the managing underwriter to the registered clearing agency.[5] This change reflects current capabilities of the automated comparison system to process when-issued transactions upon two days notice of the settlement date from the underwriter.

Prior to the current amendment, MSRB rule G–12(b) required that the settlement date of a when-issued transaction for the rare inter-dealer transactions not eligible for automated comparison could not be earlier than the fifth business day following the date the physical confirmation indicating the final settlement date was sent (six days for syndicate transactions).[6] Under the revised rule, the settlement date for such ineligible when-issued transactions, including syndicate transactions, shall not be earlier than the third business day following the date that the confirmation indicating the final settlement date is sent.

Furthermore, the MSRB amended rule G–12(c) concerning the sending of confirmations for inter-dealer transactions not eligible for automated comparison. For such ineligible when-issued transactions, the MSRB is reducing the time period for sending (i) the initial confirmation from two business days to one business day after trade date and (ii) the final confirmation from five business days to three business days prior to final settlement. For regular-way transactions ineligible for automated comparison, the MSRB is changing the requirement for sending a confirmation from one business day after trade date to trade date.

In addition, the MSRB is amending rule G–34 to require underwriters to submit interest rate and final maturity information about new issues to the registered clearing agency offering comparison services as soon as such information is known and to reorganize the existing requirements of the rule. The MSRB is aware of instances in which incomplete or inaccurate security descriptions for new issue municipal securities are available in the initial days of trading in the issue. The MSRB's Transaction Reporting Program and participants in the municipal securities market rely on accurate and complete security descriptions in the automated comparison system. The new requirement is designed to ensure that the registered securities clearing agencies have the information necessary to provide accurate descriptions and to calculate accurately final money amounts. Because the MSRB's Transaction Reporting Program is linked to the National Securities Clearing Corporation's (''NSCC'') automated comparison system,[7] the proposed amendment also will facilitate accurate prices and security descriptions in the NSCC system.

The requirement that an underwriter provide the registered clearing agency with notification of the settlement date as soon as it is known is being moved from rule G–12(b) to rule G–34. The placement of this requirement within rule G–34 is part of the MSRB's plan to include basic new issue requirements for underwriters within one rule.[8] Finally, the MSRB is making technical changes in rule language to clarify the different processing requirements for transactions that are eligible for automated comparison as opposed to

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36352 (October 6, 1995), 60 FR 53652 [File No. SR–MSRB–95–14] (notice of filing of proposed rule change).

[3] Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 [File No. SR–MSRB–94–10] (order approving proposed rule change).

[4] MSRB rule G–14 sets forth the Transaction Reporting Procedures for inter-dealer transactions.

[5] Former MSRB rule G–12(b)(ii)(c) required the underwriter to provide the initial settlement date for a new issue to the registered clearing agency offering automated comparison services as soon as the initial settlement date was known or immediately upon a change. This requirement continues in effect by cross-reference in revised rule G–12(b)(2)(C) to new rule G–34(a)(ii)(D)(2). Generally, the automated comparison system requires two days advance notice of the initial settlement date of an issue from the underwriter to process when-issued transactions for the underwriter and all other dealers.

[6] Nearly all new issue municipal securities are eligible for automated comparison with the exception of those that do not meet the CUSIP numbering eligibility requirements.

[7] As set forth in detail in MSRB rule G–14, brokers, dealers, or municipal securities dealers must submit or cause the submission of specified transaction information for any transaction eligible to be compared in NSCC's automated system directly to NSCC or to another registered clearing agency linked with NSCC for the purpose of automated comparison.

[8] As amended, Rule G–34 will require underwriters for new issues of municipal securities to carry out certain functions. Generally, underwriters must apply for depository eligibility, attain CUSIP numbers, communicate CUSIP numbers and the initial trade date to syndicate and selling group members, and, for any new issue eligible for automated comparison, to provide the clearing agency responsible for comparing when, as and if issued transactions with final interest rate and maturity information and the settlement date as soon as they are known.

those transactions that are ineligible for automated comparison.

II. Discussion

Section 15B(b)(2)(C)[9] of the Act authorizes the MSRB to adopt rules to foster cooperative and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The MSRB also has the authority to adopt rules to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general to protect investors and the public interest. The Commission believes the MSRB's proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) because it will require earlier confirmation of certain inter-dealer when-issued and regular way transactions and require a shorter settlement cycle for certain inter-dealer when-issued transactions. Furthermore, the amendments will conform the MSRB's rules regarding the settlement dates for when-issued transactions eligible for automated comparison at a registered clearing agency with the clearing agency's processing capabilities for these transactions. Finally, the amendments require underwriters to provide registered clearing agencies with interest rate and final maturity information about new issues as soon as such information is known. This should help ensure that clearing agencies have the information necessary to calculate accurately final money amounts and to provide complete and accurate descriptions of new issues in the automated comparison system and should promote accurate pricing and securities descriptions in the MSRB Transaction Reporting System which is linked to the automated comparison system.

Collectively, the amendments should facilitate automated comparison of transactions in municipal securities and foster cooperation and coordination with persons involved in the clearance and settlement of municipal securities by making MSRB rules and clearing agency processing capabilities consistent thus enabling the municipal securities market to maximize the benefits and efficiencies from the automated comparison system and by helping to ensure more timely confirmation of certain municipal transactions thereby increasing the likelihood that such transactions will settle within the shorter settlement cycle established in this proposal. Finally, the proposal should remove impediments to and perfect the mechanisms of a free and open market in municipal securities by requiring more efficient and accurate reporting of transaction information by underwriters to clearing agencies and thus to the MSRB Transaction Reporting System.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15B of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSRB–95–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00040 Filed 1–2–96; 8:45 am]

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[9] 15 U.S.C. § 78o–4(b)(2)(C).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36612; File No. SR–NASD–95–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Commencement of Third Market Trading in Initial Public Offerings of Exchange-Listed Securities

December 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which have been prepared by the self-regulatory organization. On December 15, 1995, the NASD filed with the Commission Amendment No. 1 to the proposal which clarifies the operation of the proposed amendment, and requests accelerated effectiveness of the proposed rule change.[3] 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 and Substance of the Proposed Rule Change

The NASD proposes to amend Section 4 of Schedule G to the NASD By-Laws to prohibit NASD members from executing over-the-counter transactions in an exchange-listed security that is the subject of an initial public offering (''IPO security'') until the security has opened for trading on the exchange that lists the security.[4] (Additions are in italics; deletions are bracketed.)

Schedule G

Sec. 1. Definitions

(a)–(f). No change.

(g) The term ''over-the-counter transaction'' shall mean a transaction in an eligible security effected otherwise than on a national securities exchange.

(h) A security is subject to an ''initial public offering'' if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Sec. 4. Trading Practices

(a)–(h). No change.

(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

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 Section A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, Commission, dated December 15, 1995.

[4] The Commission notes that the paragraph designation within the proposed rule language, as originally filed, has been adjusted with the NASD staff's consent, to reflect an outstanding proposal currently under review with the Commission. Telephone conversation between Tom Gira, Assistant General Counsel, NASD, and Betsy Prout Lefler, Senior Counsel, Commission, on December 19, 1995.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add new Section 4(i) to Schedule G to the NASD By-Laws to provide that, after completion of an IPO of an exchange-listed security, NASD members and persons associated with NASD members are prohibited from executing over-the-counter transactions in the security until the exchange listing the security has first opened the stock for trading. Under the proposal, a stock is deemed to be first opened on the listing exchange when the exchange disseminates an opening transaction in the security via the Consolidated Tape.

Although it is common practice that participants in the third market refrain from trading an IPO security until the exchange listing the IPO opens the stock for trading, the NASD is submitting the instant proposal to prohibit trading in the third market until the security is first opened for trading on its listing exchange. While the NASD has found no evidence that the trading of IPOs in the third market has had any detrimental market effect, the NASD believes the proposed limited prohibition on the trading of IPOs in the market is a prudent precautionary step that is consistent with the orderly distribution and pricing of IPO securities.

Accordingly, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be 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. Specifically, the NASD believes the proposal will help to promote the fair and orderly distribution and pricing of IPO securities, thereby facilitating the capital formation process and promoting the protection of investors.

In addition, the NASD believes this proposal is consistent with recent rule amendments adopted by the Commission with respect to the procedures by which regional exchanges may extend unlisted trading privileges (''UTP'') to IPO securities.[5] In the UTP Approval Order, the Commission shortened to one day, yet retained, the time period during which regional exchanges are prohibited from granting UTP to IPO securities. In adopting these rule changes, the Commission stated that it:

> believes that a one-trading-day delay to precede UTP in listed IPOs is appropriated at this time primarily because the Commission is concerned that the first day of trading in an IPO on an exchange presents special circumstances, including initial pricing, an attempt to effectuate an orderly distribution of securities, high trading volume, and the resulting potential for high price volatility in the securities, that could have a significant effect on pricing and distribution of IPOs.[6]

Accordingly, under the NASD's proposal, even though the third market will still be able to trade an IPO security immediately after the listing exchange opens the stock for trading, the third market, like the regional exchanges, would be precluded from trading the securities until the primary market opens the stock for trading. In addition, the NASD notes that the Commission did not object to or raise concerns with the ability of the third market to trade an IPO on the day of the IPO, while the regional exchanges must wait one day before trading the issues. Specifically, the Commission stated that it is:

> sympathetic to concerns that a one-day delay for exchange extensions of UTP will restrict regional exchange trading, while OTC dealers will continue to be free to trade the securities upon effective registration. The evidence * * *, however, shows that in virtually all IPOs studied, OTC market makers trade the securities only in extremely small volume, if at all, on the first day of the IPO. The Commission believes, therefore, that any competitive advantage to OTC market makers is minimal, and is outweighed by the benefit to investors and the capital formation process that should be accrued by decreasing the risk of price volatility in the IPO securities.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act because of the infrequency with which the third market is the first market to trade an exchange-listed IPO. Specifically, given that the third market is rarely the first market to trade an exchange-listed IPO, the NASD believes the proposal will have minimal impact on the third market, while serving as a prudent precautionary step designed to promote the orderly distribution and pricing of IPO securities. In addition, the NASD notes that its proposal is consistent with recent rule amendments adopted by the Commission in the UTP Approval Order with respect to the procedures by which regional exchanges can extend UTP to IPO securities. Accordingly, the NASD believes no regulatory purpose would be served by delaying approval of the NASD's proposal.

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 th4e 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. SR–NASD–95–30 and should be submitted by January 24, 1996.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. The Commission believes the proposal

[5] *See* Securities Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (''UTP Approval Order'').

[6] UTP Approval Order, *supra* Note 5, 60 FR at 20894.

[7] *Id.*

should serve to promote just and equitable principles of trade and protect investors and the public interest by facilitating the orderly distribution and pricing of IPO securities. Specifically, the proposed mandatory delay in third market trading of IPO securities should help to minimize any potential risk of price volatility that may be associated with multiple-market trading of listed IPO securities before the listing exchange has provided for the first trade in the security. This should benefit investors and the capital formation process by decreasing the risk of price volatility in the IPO securities.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate because the proposal is an important precautionary measure for the protection of investors, yet accelerated approval should have minimal impact on market participants because the third market so rarely trades IPOs before the listing exchange effects the first trade in the securities.

It is therefore ordered, pursuant to Section 19(b)(2)[8] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00036 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36638; File No. SR–NASD–95–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend Section 65 of the Uniform Practice Code to Require Members Who are Participants in a Registered Clearing Agency to Use the Electronic Facilities of such Agency to Transmit Customer Account Transfer Instructions

December 26, 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 16, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD proposes to amend Section 65 of the Uniform Practice Code (UPC'')[1] to require members who are participants in a registered clearing agency to use the electronic facilities of such agency to transmit customer account transfer instructions. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

UNIFORM PRACTICE CODE

Customer Account Transfer Contracts

Sec. 65.

* * * * *

Participant in a Registered Clearing Agency

(m)(1) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities and are eligible to use such capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this rule and pursuant to the rules of and through such registered clearing agency.

(2) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with an automated facility for transferring mutual fund positions such facilities must be utilized for transferring mutual fund positions.

(3) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with a facility for transferring residual credit positions (both cash and securities) which have accrued to an account after the account has been transferred (residual credit processing), such facilities must be utilized for transferring residual credit positions from carrying member to receiving member.

(4) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with a facility permitting electronic transmittal of customer account transfer instructions, such facilities shall be used in accordance with the following:

(A) Members using such facilities shall execute an agreement designated by the Committee specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) Customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) The transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving member that it has received a properly executed Transfer Instruction Form (TIF) or other actual authority to receive the customer's securities and funds; and

(D) Transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by this Section and the clearing agency.

[(4)]*(5)* For purposes of this rule, the term ''registered clearing agency'' shall be deemed to be a clearing agency as defined in the Securities Exchange Act of 1934 and registered in accordance with that Act.

* * * * *

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 NASD 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 NASD 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

Background

Section 65 of the UPC requires a customer who wishes to transfer an account from one member to another to give written notice (a Transfer Instruction Form or ''TIF'') to the member who will be receiving the

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[8] 15 U.S.C. § 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] *NASD Manual,* Uniform Practice Code, Section 65 (CCH) ¶ 3565.

account (''receiving member''). The notice is then delivered to the member carrying the account (''carrying member'') and the carrying member is then obligated to validate and return the TIF, or take exception to all or part of it. The account is then transferred to the receiving member, subject to the exceptions.

Subsection 65(m) of the UPC requires members to use the automated systems of a registered clearing agency, when available, to accomplish account transfers when both the receiving member and carrying member are participants in the clearing agency. The use of such automated systems avoids the delay and risk associated with physical delivery and transfer of securities.

The National Securities Clearing Corporation's (''NSCC'') Automated Customer Account Transfer Service (''ACATS'') is currently the only automated transfer system and is the system through which virtually all customer accounts are transferred between members. Until recently, however, it was standard industry practice to deliver physically (or by facsimile) a customer-signed TIF to the carrying member, even though member firms use ACATS to accomplish electronic transfers of the customer accounts.

In early 1993, NSCC implemented a voluntary TIF Immobilization Program (''Program'') to permit transfer instructions to be transmitted electronically through ACATS. The goal of the Program is to automate the entire customer account transfer process and immobilize the TIF at the receiving firm.[2] To participate in the Program current participants require new participants to execute a ''Pilot Program Agreement'' (''Agreement'') that specifies the rights, obligations and liabilities of the participants. The Agreement was developed by the industry at the encouragement of NSCC when the Program was initiated.[3] The most significant aspect of the Agreement is that it shifts liability for improper transfers to the receiving firm, provided the carrying firm transfers the account according to the instructions it receives through ACATS.[4]

The NASD is aware that some investors and others believe that account transfers are unreasonably delayed for reasons that are not related to difficulties in account transfer procedures. The NASD believes that such delays are rare, but that any unreasonable delay in transferring customer accounts is unacceptable and detrimental to the interests of investors. The NASD believes that mandating participation in the Program should help reduce or eliminate the infrequent delays that some customers may be experiencing when transferring accounts and improve investor confidence in the industry's ability and willingness to comply expeditiously with customer instructions.

Proposed Amendment to Section 65 of the UPC

The proposed amendment to Section 65 of the UPC will require members to transmit account transfer instructions electronically through automated systems when both the carrying and receiving firms are participants in a registered clearing agency that has such automated facilities. The effect of this proposed rule change is to require members who are NSCC participants to participate in NSCC's TIF Immobilization Program and to use NSCC's ACATS system to transmit customer account transfer instructions.

The proposed rule change also requires members participating in the TIF Immobilization Program to execute an agreement designated by the NASD's Operations Committee specifying the rights, obligations and liabilities of all participants in or users of NSCC's ACATS system in transmitting customer account transfer instructions. The NASD intends to designate the Pilot Program Agreement currently in use among participants in order to maintain continuity of rights obligations and liabilities among current and future participants. In addition, by providing for the designation of the Agreement for purposes of the proposed rule, the NASD's Operations Committee will be able to review and approve any changes to the agreement that may be proposed by participants or others in the future.

The proposed rule change also requires that customer account transfer instructions be transmitted in accordance with the procedures prescribed by the registered clearing agency. NSCC's rules currently prescribe procedures for transmitting customer account transfer instructions.[5]

The proposed rule change also provides that the transmittal of a transfer instruction constitutes a representation that the receiving member has received a properly executed TIF or other actual authority to receive the customer's account. Although it is similar to a provision in the Agreement, the NASD intends that this provision will perform a regulatory function in that a member transmitting account transfer instructions through ACATS without first obtaining a properly executed TIF or other actual authority from the customer may be subject to disciplinary sanctions for misrepresenting its authority to receive the customer account. Such a misrepresentation may constitute a violation of Article III, Section 1 of the Rules of Fair Practice.[6]

Finally, the proposed rule change provides that transfer instructions transmitted through an electronic facility shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by Section 65 of the UPC and the clearing agency. This provision means that members transmitting transfer instructions must comply with Section 65 and with the requirements of NSCC's rules[7] and that generating a valid transfer instruction involves providing the information that NSCC considers necessary to accomplish the account transfer.

[2] The Program has grown to 27 broker/dealers representing 85% of the accounts transferred.

[3] NSCC administers the Program by providing application material to prospective participants. The application material includes the Agreement.

[4] For transfers occurring outside the Program a carrying firm is liable, in general, if it improperly transfers an account, or securities in an account. Such an improper transfer could occur, for example, if the carrying firm transferred the wrong account or if an IRA account was transferred in a manner that subjected the account owner to unintended tax liability. Finally, it could occur if the receiving firm, or a former employee who had moved to the receiving firm, submitted a transfer instruction that had not been authorized by the customer. In such cases, if the carrying firm did not verify the transfer instruction with the customer, the carrying firm would be primarily liable for the improper transfer even if it could sue the receiving firm for transmitting an unauthorized or incomplete transfer instruction.

The forgoing examples are neither exhaustive of possible improper transfer scenarios, nor are they representative of any specific cases. Moreover, the NASD is not aware of any cases of improper transfers occurring because of fraudulent actions by a receiving firm or its employees.

[5] *See* NSCC Rule 50.

[6] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.

[7] NSCC's rules permit it to specify the information required for a customer account transfer instruction. Neither the NSCC's rules nor UPC Section 65 specify the information that constitutes a valid transfer instruction, however, NSCC currently uses two forms, one for cash/margin accounts and the other for tax exempt/retirement accounts. In addition, UPC Section 65 sets forth several bases for carrying members to take exception to account transfer instructions, some of which relate to incomplete or missing information about the account or securities in the account. For automated transmittals of account transfer instructions, NSCC requires the same information to be entered into ACATS by the receiving firm as is required on TIFs. In addition, NSCC reviews transfer instructions received through ACATS and may require the receiving firm to provide any other information it deems necessary to accomplish an account transfer.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that requiring participation in a program that permits account transfer instructions and customer accounts to be transferred entirely by electronic communications will promote the protection of investors and the public interest and enhance the clearance and settlement system by reducing the delays associated with the physical transmission of TIFs and increasing investor confidence in the responsiveness of the securities industry.

(B) Self-Regulatory organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–95–59 and should be submitted by January 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Johathan G. Katz,

Secretary.

[FR Doc. 96–00039 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36624; File No. SR–PTC–95–08]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Proposed Rule Change Modifying the Opening of Processing Activity for Security Transactions on a Permanent Basis

December 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 19, 1995, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–95–08) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. 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 proposed rule change modifies and makes permanent a ninety day pilot program that commenced on October 23, 1995, that established the opening of security processing activity at 8:30 a.m. instead of the previous time of 7:00 a.m. For purposes of participant log-ons, intraparticipant movements of securities, and the return of securities collateral to participant positions using PTC's Collateral Loan Facility (''CLF'') mechanism, PTC will retain the 7:00 a.m. opening time.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify and make permanent the ninety day pilot program that commenced on October 23, 1995, that established the opening of security processing activity at 8:30 a.m. instead of the previous time of 7:00 a.m. The current end-of-day cut-off times will remain unchanged. Consistent with the pilot program, PTC's processing system will retain the 7:00 a.m. opening time for purposes of participant log-ons and intraparticipant movements of securities into or out of segregated accounts. In addition, the pilot program will be modified to permit the return of securities collateral to participant positions using the CLF mechanism beginning at 7:00 a.m.

The proposed rule change will conform the opening of processing activity at PTC to the opening time of the Federal Reserve System's fedwire. This will eliminate the hour and a half window during which time transactions failing PTC's credit checks cannot be processed because participants are unable to move funds to PTC (''prefunding'') until the 8:30 fedwire opening. The incidence of transactions that may require prefunding in order to pass credit checks during this period is expected to increase after the implementation of PTC/SPEED processing Release 5.6, which will eliminate the posting of securities to a participant's abeyance account while awaiting match by the receiving participant. Under SPEED Release 5.6, the abeyance account will be eliminated, and transactions will be immediately posted to the deliverer's and receiver's account.[4]

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[1] 15 U.S.C. § 78s(b)(1) (1998).

[2] Securities Exchange Act Release No. 36405 (October 20, 1995), 60 FR 55629 [File No. SR–PTC–95–07] (notice of filing and order granting accelerated approval of proposed rule change).

[3] The Commission has modified the text of the summaries prepared by PTC.

[4] For further information on SPEED Release 5.6 and changes to PTC's processing system, refer to Securities Exchange Act Release No. 36377 (October

Based on its experience during the pilot program, PTC anticipates that the later opening of processing activity will have no impact on the settlement process. PTC will continue to monitor any effects of the change.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not received written comments on the proposed rule change. The pilot program and the proposed permanent opening of security processing activity at 8:30 a.m. was discussed on December 7, 1995, at a meeting of the PTC Operations Committee, which consists of participant representatives. It was the consensus of the Committee members that the 8:30 a.m. opening time should be made permanent and that in addition to the intraparticipant activities that retained the 7:00 a.m. opening time under the pilot program the return of collateral using the CLF mechanism should also open at 7:00 a.m.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety 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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

16, 1995), 60 FR 54741 [File No. SR–PTC–95–06] (notice of filing of proposed rule change.

[5] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

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 in 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 PTC. All submissions should refer to file number SR–PTC–95–08 and should be submitted by January 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00019 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36636; International Series Release No. 910; File No. SR–PHLX–95–62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Selective Quoting Facility for Foreign Currency Options

December 26, 1995.

I. Introduction

On September 18, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 to amend the Selective Quoting Facility (''SQF'') for foreign currency options (''FCOs'') to reduce the number of FCO strike prices which the Exchange must make available for continuous dissemination to the public throughout the trading day.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on November 24, 1995.[3] No comments were received on the proposal.

II. Description of the Proposal

The SQF, contained in Commentary .04 to PHLX Rule 1012, ''Series of Options Open for Trading,'' and Floor Procedure Advice (''Advice'') F–18, ''FCO Expiration Months and Strike Prices,'' is a feature of the Exchange's Auto-Quote system which establishes criteria to determine whether the bid/ask quotation for each FCO series is eligible for processing through the Options Price Reporting Authority (''OPRA'') for off-floor dissemination to vendors. The SQF categorizes each FCO series as either an ''update strike'' or a ''non-update strike.'' ''Non-update'' or ''inactive'' strikes are disseminated with the OPRA indicator ''I'' and zeroes (*e.g.*, 000–000) in lieu of a market. When a series is added to the inactive category, those bids and offers are no longer updated in the Exchange's Auto-Quote system for dissemination. Because inactive series are not continuously updated and disseminated, quotation processing times are shortened so that quotes of interest are updated and disseminated to customers more quickly. According to the PHLX, approximately 40% of the Exchange's 10,000 FCO strike prices are currently inactive.

Update strikes, for which PHLX quotes must be made available for continuous dissemination to the public throughout the trading day currently include, at the minimum: (1) the four strike prices below and the four strike prices above the underlying price for American-style options[4] with expiration dates of the three nearest mid-month expirations and the three nearest month-end expirations; and (2) any other European-style[5] or American-style series where there is open interest as of the commencement of that date. In addition, update series may be activated intra-day at the initiative of the PHLX or in response to a request from either the respective specialist or from an FCO floor official.

The PHLX proposes to amend Exchange Rule 1012, Commentary .04 and Advice F–18 to (1) categorize series

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36473 (November 9, 1995), 60 FR 58124.

[4] An American-style option can be exercised on any business day prior to its expiration date and on its expiration date.

[5] A European-style option can only be exercised during a specified period before it expires.

which maintain open interest but have not traded within the previous five days as nonupdate series; and (2) amend the definition of update series to include the approximately 10, 20, 30, 40 and 50 delta[6] strikes below and above the underlying price rather than the four strike prices above and below the underlying price. The proposal to amend the definition of update series to include the approximately 10, 20, 30, 40, and 50 delta strikes below and above the underlying price will not result in additional strike price intervals; rather, it will identify the existing strike prices which will be classified as update series.[7] Because deltas change, the designation of active strikes will also be changed automatically throughout the trading day.

According to the PHLX, recent volatility in the foreign currency markets has caused fluctuating and dramatic movements in foreign currency exchange rates.[8] This volatility has resulted in the addition of more strike prices as the spot price moves to accommodate the new trading ranges of the underlying currencies. The Exchange believes that these market conditions impose an onerous burden on FCO specialists to maintain updated markets in strike prices for which, on occasion, there is little or no customer interest. The purpose of the proposal is to alleviate this burden and, thus, to improve the timeliness and accuracy of FCO quotes in which there is apparent customer interest. By eliminating quote change disseminations in series with no probable public investor interest, the proposal will reduce dissemination delays caused by thousands of quote changes in volatile trading periods.

According to the PHLX, categorizing series which maintain open interest but have not traded within the previous five days as non-update series will eliminate a significant number of quote changes, because in many series a small number of FCO positions create open interest, which remains without fluctuation or additional trading volume. The PHLX notes that public customers, like all market participants, continue to be protected by the SQF feature which requires a quotation to be disseminated before a trade can be entered.[9] In addition, the PHLX believes that the proposal protects public investors because one quote will be disseminated at the end of the trading day for any inactive series with open interest. The purpose of this quote is to provide option holders with an indication of the market for that option as well as to provide the Options Clearing Corporation (''OCC'') with a closing value to mark the market for margin and capital purposes.[10]

The proposal also redefines active strikes as those with an approximately 10, 20, 30, 40, or 50 delta around the underlying price. According to the PHLX, the purpose of this change is to categorize strike prices in the terminology used by FCO market participants. The PHLX notes that, in some instances, the fourth strike price below the spot price could be a 30 delta option, so that the activated around-the-money series would not include a 40 or 50 delta option. The Exchange believes that it is important to define strike prices with a delta up to 50 as update series because these represent the most active, volatile options, for which the dissemination of quotes is meaningful.

The PHLX recognizes that redefining active strikes in terms of a delta figure may result in a greater number of strikes. Further, the Exchange notes that the delta associated with a strike changes as the spot price changes, different strikes will become the 10–50 delta strikes, and, thus, the active series. Therefore, the PHLX proposes to amend the SQF to ''de-activate'' strikes intra-day that are no longer around-the-money based on a delta change.[11] The PHLX will update and disseminate new around-the-money strikes in response to market changes.

Thus, the Exchange believes that enhancing the SQF should address the strike price and quote change situation in a volatile FCO market. The PHLX estimates that the proposal will reduce the number of strike prices currently disseminated each day by approximately 15%, or 1,000 strikes, which will improve the Exchange's ability to provide timely and accurate quotes, including quotes in new FCO products that may be traded on the Exchange in the future.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest. Specifically, the Exchange believes that the proposal should promote just and equitable principles of trade by facilitating speedier dissemination of FCO markets. The PHLX states that the proposal is also designed to facilitate coordination between the Exchange and the OCC, OPRA, and securities information vendors. Finally, the PHLX believes that the proposed changes to the SQF should facilitate the specialists' ability to focus on active series, which should, in turn, result in tighter, more liquid markets, consistent with Section 6(b)(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, the requirements of Section 6(b)(5).[12] The Commission believes that the proposed amendments to the SQF will result in more timely and accurate FCO quote displays in series of known or probable interest to public customers. Moreover, the Commission believes that the proposal will increase the efficiency of the PHLX's option data transmission lines and increase the speed of the dissemination of FCO quotes to public investors in the series of most interest to market participants, thereby helping the PHLX to maintain fair and orderly options markets.[13]

Specifically, the PHLX proposes to categorize series with open interest that have not traded within the previous five days as non-update series. According to the Exchange, in many series a small

[6] Delta is a measure of how an option premium changes in relation to the price of the underlying instrument. For example, a delta of 50 means that for every one point move in the spot price of an underlying foreign currency, the option premium moves ½.

[7] Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on October 6, 1995.

[8] The PHLX notes that these conditions have been particularly pronounced for Japanese yen options. *See* Securities Exchange Act Release No. 36539 (November 30, 1995), 60 FR 62910 (December 7, 1995) (File No. SR–PHLX–95–47) (order approving proposed rule change to widen the quote spread parameters for Japanese yen options).

[9] *See* Securities Exchange Act Release No. 33067 (October 19, 1993), 58 FR 57458 (October 26, 1993) (order approving File No. SR–PHLX–92–23) (''SQF Approval Order''). In the SQF Approval Order, the Commission noted that public customers are protected by the feature of the SQF which requires a quotation to be disseminated after an options series is activated but before a trade can be entered.

[10] *See* PHLX Rule 722(e)(i). *See also* SEC Rule 15c3–1.

[11] Under the proposal, a strike that is no longer around-the-money based on a delta change may qualify as an update strike if there is open interest in the series and the series has traded within the previous five trade dates.

[12] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[13] The PHLX estimates that the proposal will reduce the number of FCO strike prices currently disseminated each day by approximately 15%, or 1,000 strikes.

number of FCO positions creates open interest, which remains without fluctuation or additional trading volume; the PHLX believes that classifying series with open interest that have not traded within the previous five days as non-update series will eliminate a significant number of quote changes. This, in turn, should decrease FCO quotation processing times so that active quotes are updated and disseminated more quickly to public investors.

In addition, the PHLX proposes to amend the definition of update series to include the approximately 10, 20, 30, 40, and 50 delta strikes below and above the underlying price. The delta associated with a strike changes as the spot price changes, so that different strikes become the approximately 10–50 delta strikes and, thus, the active series. According to the PHLX, strike prices with a delta up to 50 represent the most active, volatile options, for which the dissemination of quotations is meaningful. Because the proposal provides that the approximately 10–50 delta strikes above and below the underlying price will be classified as update series, it benefits investors and helps the PHLX to maintain fair and orderly markets by allowing for the updating and dissemination of the quotations that are most useful to FCO market participants.

The PHLX proposes further to de-activate strikes intra-day that no longer fit the definition of active, thus eliminating quote change disseminations in series of improbable public investor interest and helping the PHLX to provide timely and accurate FCO quotes in series of interest to investors.[14] At the time, the Exchange proposes to update and disseminate strikes which become active due to market changes, thereby helping to ensure that the most active FCO strikes are updated and disseminated throughout the trading day.

In addition, the Commission believes that the proposal protects market participants by providing for the dissemination of one bid/ask quote at the end of each trading day for non-update series with open interest. This quote will provide option holders with an indication of the market for that option and will provide the OCC with a closing value to mark the market for margin and capital purposes.

The Commission continues to believe, as it has concluded previously,[15] that the SQF, as amended, will not create an advantage to FCO participants on the trading floor with respect to the trading of options series not disseminated to the public. Public customers are protected by the feature of the SQF which requires a quotation to be disseminated after an options series is activated but before a trade can be entered. Accordingly, a participant who is physically on the trading floor will learn of the specialist's market for a given options series when the series is activated and a quote is published, nearly identical in time to a potential customer watching a vendor screen off-floor.

IV. Conclusion

For the foregoing reasons, the Commission finds that the PHLX's proposal to amend the SQF 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,[16] that the proposed rule change (SR–PHLX–95–62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00038 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[14] A strike that is no longer around-the-money based on a delta change may qualify as an update strike if there is open interest in the series and the series has traded within the previous five trading days. In addition, update series may be activated intra-day at the PHLX's initiative or in the response to a request from a specialist or an FCO floor official.

[15] *See* SQF Approval Order, *supra* note 9.

[16] 15 U.S.C. § 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36637; File No. SR–Phlx–95–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Options on the PHLX Big Three Auto Sector Index

December 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange. On December 20, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the Phlx Big Three Auto Sector Index (''Big Three Auto Index'' or ''Index''), a capitalization weighted index developed by the Phlx composed of all of the U.S. automobile manufacturing company stocks. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to list for trading an European-style option[4] on the Phlx Big Three Auto Sector Index which is an index representing the domestic automobile industry. The Phlx believes that the Big Three Auto Index will appeal to individual investors as well as program and basket traders because the Index reflects the direction and pricing of the nation's entire domestic automobile industry. Because the Big Three Auto Index is based on a small number of actively traded stocks, the Exchange believes that replication of the Index for hedging purposes with underlying stocks can be readily accomplished with complete accuracy. Thus, the Phylx believes that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to amend its position limit rule to state that the position limit for options on the Big Three Auto Index is 5,500 contracts total. Additionally, the Exchange proposes to amend the filing to change the method of calculating the Index from equal-dollar weighting to capitalization weighting. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated December 20, 1995 (''Amendment No. 1'').

[4] European-style options can be exercised only during a specific time period prior to expiration of the options.

proposed Big Three Auto Index is unique and will fill a current market void. The Exchange does not believe that the Big Three Auto Index will be susceptible to manipulation as the stocks comprising the Big Three Auto Index represent extremely large, liquid, and widely held common stocks. The Exchange represents that all three underlying component securities are traded on the New York Stock Exchange and are therefore, ''report securities'' as defined in Rule 11Aa3–1 under the Act. Further, the Exchange represents that all three underlying component securities currently meet the Phlx's listing criteria for equity options contained in Exchange Rule 1009 and are the subject of options trading on U.S. options exchanges.

The Phlx represents that as of December 19, 1995, the market capitalization of the individual stocks in the Index ranged from a high of $37.37 billion (General Motors Corp.) to a low of $20.51 billion (Chrysler Corporation). The market capitalization of all three of the stocks in the Index was approximately $88.23 billion. The total number of shares outstanding on October 31, 1995 for the stocks in the Index ranged from a high of 1.07 billion shares (Ford Motor Company) to a low of 382 million shares (Chrysler Corporation). Additionally, the average monthly trading volume in the U.S. of the stocks in the Index, for the twelve-month period from November 1, 1995 to October 31, 1995, ranged from a high of 69 million shares per month (Ford Motor Company) to a low of 50.9 million shares per month (General Motors Corp.). Lastly, as of December 19, 1995, no one stock accounted for more than 42.57% (General Motors Corp.), or less than 23.19% (Chrysler Corporation), of the Index's total value.[5]

The Big Three Auto Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price multiplied by the total number of shares outstanding, in relation to the total market value of all the securities in the Index. The Exchange believes that this capitalization weighting methodology is appropriate because many investors who might use this Index as a hedging vehicle own stock baskets containing shares of each of the three component stocks in amounts proportionate to their respective market capitalizations. The Index value was set at a starting value of 200 as of September 29, 1995. The value of the Index as of the close of trading on December 19, 1995 was 199.58. The formula for calculating the ''Current Index Value'' is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price x shares outstanding) for all component securities

Divisor = The number which, when divided from the total capitalization when the Index was initially calculated (on September 29, 1995), yielded an Index value of 200.

In order to maintain continuity in the value of the Index, the Index divisor will be adjusted to reflect non-market changes in the capitalization of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions. The formula for adjusting the divisor is as follows:

$$\text{Divisor} = \frac{\text{Total Capitalization (as a result of adjustments)}}{\text{Index Value}}$$

Adjustments in the value of the Index which are necessitated by the addition and/or the deletion of an issue from the Index are made by adding and/or subtracting the market value (price times shares outstanding) of the relevant issues.

The Big Three Auto Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete that stock from the Index and replace it with another domestic automobile industry stock. If no replacement is available, the Exchange will submit a proposed rule change pursuant to Section 19(b) of the Act and that proposal would have to be specifically approved by the Commission before the Exchange is able to open any new series of options on the Index for trading.

The Phlx will evaluate the Index quarterly, following the close of trading on the third Friday at each March, June, September, and December to ensure that it is an accurate representation of the intended market character of the Index. The Exchange represents that all of the stocks comprising the Index are options eligible[6] and have overlying options currently trading. If at any time, any of the component issues are not options eligible, the Exchange will submit a new proposed rule change pursuant to

[5] The weightings of all 3 components of the Big Three Auto Index as of October 31, 1995 are as follows: General Motors Corp.—42.57%; Ford Motor Company—34.22%; and Chrysler Corporation—23.19%.

[6] The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* Phlx Rule 1009, Commentary .01.

Section 19(b) of the Act and that proposal would have to be specifically approved by the Commission before the Exchange is able to open any new series of options on the Index for trading. Additionally, if at any time, the Exchange determines to increase or decrease the number of component issues, the Exchange will submit a new proposed rule change pursuant to Section 19(b) of the Act.

The settlement value for the Index options will be based on the opening values of the component securities on the date prior to expiration. Index options will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ the same position limit applicable to the Exchange's Super Cap Index pursuant to Phlx Rule 1001A(b). Specifically, the position and exercise limits for the Big Three Auto Index options, will be 5,500 contracts on the same side of the market.[7] The Big Three Auto Index option will not be subject to a hedge exemption.

Exercise price intervals will be set at five point intervals in terms of the current value of the Index. Additional exercise prices will be added in accordance with Phlx Rule 1011A(a).

As with the Exchange's other indexes, the multiplier for options on the Big Three Auto Index will be 100. The Big Three Auto Index options will trade from 9:30 a.m. to 4:10 p.m. eastern time.

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus at least two additional near-term months so that the three nearest term months will always be available. LEAPS will also be traded on the Index pursuant to Phlx Rule 1101A(b)(iii).

Big Three Auto Index options will be traded pursuant to current Phlx rules governing the trading of index options.[8] The Exchange notes that surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor the trading of options on the Big Three Auto Index. These procedures included having complete access to trading activity in the underlying securities which are all traded on the NYSE via the Intermarket Surveillance Group Agreement (''ISG Agreement'') dated July 14, 1983, as amended on January 29, 1990.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such 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 PHLX. All submissions should refer to SR–Phlx–95–74 and should be submitted by January 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–00037 Filed 1–2–96; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Amendment No. 1, *supra* note 3.

[8] *See* Phlx Rules 1000A through 1103A, and 1000 through 1070.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/22/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–944.
Date filed: December 18, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0726 dated December 5, 1995 r–1–13, Expedited Europe-Southwest Pacific resos, Intended effective date: February 1, 1996.

Docket Number: OST–95–954.
Date filed: December 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1868 dated December 1, 1995 r–1–15, TC2 Reso/P 1869 dated December 1, 1995 r–16–38, TC2 Reso/P 1870 dated December 1, 1995 r–39–48, Intended effective date: April 1, 1996.

Docket Number: OST–95–955.
Date filed: December 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1708 dated November 24, 1995, South Atlantic-Europe/Middle East Resos r–1–20, Intended effective date: April 1, 1996.

Docket Number: OST–95–956.
Date filed: December 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: Pursuant to Sections 41308 and 41309 of Title 49 of the United States Code and Parts 303.03, 303.05 and 303.30(c) of Title 14 of the Code of Federal Regulations, it is hereby

requested on behalf of member airlines of the International Air Transport Association (IATA) that the Department approve and confer antitrust immunity on two amendments to the IATA Articles of Association (the Articles). The two amendments were adopted by the Members of IATA at their 51st Annual General Meeting held 30–31 October 1995 in Kuala Lumpur.

Docket Number: OST–95–966.
Date filed: December 22, 1995.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/390 dated December 18, 1995, Finally Adopted Resos r–1–r–30, Intended effective date: May 1, 1996, Necessary Government Action Date: no later than April 1, 1996.

Docket Number: OST–95–967.
Date filed: December 22, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC3 Telex mail Vote 766, Japan-China fares r–1–4, TC3 Telex Mail Vote 767, Taiwan-Japan fares r–5–r–6, Intended effective date: April 1, 1996.

Docket Number: OST–95–968.
Date filed: December 22, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0729 dated December 5, 1995, Middle East-TC3 Resos r–1–42, Intended effective date: April 1, 1996.

Barbara Mills,
Acting Chief, Documentary Services Division.
[FR Doc. 96–53 Filed 1–2–96; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 22, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–953.
Date filed: December 20, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 17, 1996.
Description: Application of Alaska Airlines, Inc. pursuant to 49 U.S. 41101 and Subpart Q of the Regulations requests a permanent certificate of public convenience and necessity authorizing it to engage in the scheduled foreign air transportation of persons, property and mail between Seattle, Washington, on the one hand, and Mazatlan and Puerto Vallarta, Mexico.

Docket Number: OST–95–958.
Date filed: December 22, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 19, 1996.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests renewal of its Route 29–F certificate authority to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas and the coterminal points Guayaquil and Quito, Ecuador, via the intermediate points Mexico City, Mexico; Guatemala City, Guatemala; San Salvador, El Salvador; San Pedro Sula and Tegucigalpa, Honduras; and Panama City, Panama; as well as renewal of its Ecuador frequency allocation.

Docket Number: OST–95–962.
Date filed: December 22, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 19, 1996.
Description: Application of American Trans Air, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing ATA to engage in the scheduled foreign air transportation of persons, property and mail between New York, New York (JFK), on the one hand, and Shannon and Dublin, Republic of Ireland, on the other hand.

Docket Number: OST–95–965.
Date filed: December 22, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 19, 1996.
Description: Application of Air 4000, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity authorizing Air 4000 to provide scheduled interstate and overseas air transportation of persons, property and mail between various points in the United States.

Barbara Mills,
Acting Chief, Documentary Services Division.
[FR Doc. 96–00054 Filed 1–2–96; 8:45 am]
BILLING CODE 4910–62–P

Office of the Secretary

Transportation Marketplace Conferences and Seminars Announcement of Request for Proposals

AGENCY: Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.), Department of Transportation.

ACTION: Notice of Request for Proposals (RFP).

SUMMARY: The Department of Transportation's Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.) is responsible for the Department's implementation and execution of the functions and duties under sections eight (8) and fifteen (15) of the Small Business Act (15 U.S.C. 637) for developing policies and procedures consistent with Federal statutes to provide policy direction for small, minority, women-owned, and small disadvantaged business (S/DBE) participation in the Department's procurement and Federal financial assistance activities. The office is also responsible for assisting small, minority, women-owned and small disadvantaged businesses to participate in opportunities of the Department by establishing Transportation Marketplace Conferences and Seminars (TMC'S) at which DOT contract opportunities are advertised, relevant DOT information and materials are disseminated and workshops are available on bonding, lending, procurement, marketing, and business management are conducted by staff and outside experts. The Secretary of Transportation has encouraged DOT operating administrations to attend these conferences as his representative(s) and to provide opportunities for small entrepreneurs to participate fully in all DOT-funded procurements and DOT assisted programs. This request solicits competitive proposals from diverse organizations that can serve as OSDBU's Conference Cooordinator for OSDBU's Transportation Marketplace Conferences and Seminars. Eligible applicants must be registered with the Internal Revenue Service (IRS) as tax-exempt organizations classified under the IRS Code as a 501(c)6 trade association. OSDBU will enter into a Cooperative Agreement with one organization to provide conference coordination services between the DOT, its grantees, recipients, contractors, subcontractors, and small, minority, women-owned and disadvantaged business enterprises. This Announcement of Request for Proposal (RFP) contains information

concerning: (1) The principal objectives of the competition, eligible applicants, activities and factors for award; (2) the application process, including how to apply and the criteria used for selection; and (3) a checklist of application submission requirements.

FOR GENERAL AND SPECIFIC INFORMATION CONTACT: Mr. Arthur Jackson , Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street SW, Room 9410, Washington, DC, 20590, Tel. 202–366–2852 or 800–532–1169.

SEND PROPOSALS TO: Mr. Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization (S–40), U.S. Department of Transportation, 400 7th Street, S.W., Room 9410, Washington, D.C. 20590.

DATES: Proposals must be received at the above location by February 2nd, 1996, 4:00 p.m., Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and not reviewed. DOT plans to give notice of awards on all applications by March 4th, 1996.

Dated: December 21, 1995.

Joseph A. Capuano,

Associate Director, Office of Small and Disadvantaged Business Utilization.

Table of Contents

1. Introduction
  1.1 Background
  1.2 Program Description and Goals
  1.3 Description of Competition
  1.4 Duration of Agreements
  1.5 Authority
  1.6 Eligibility Requirements
2. Program Requirements
  2.1 Recipient Responsibilities
  2.2 Work Requirements
  2.3 Office of Small and Disadvantaged Business Utilization Responsibilities
3. Submission of Proposals
  3.1 Content and Format for Proposals
  3.2 Address, Number of Copies, Deadline for Submission
4. Selection Criteria
  4.1 General Criteria
  4.2 Scoring of Applications Application Form for Proposals—Appendix A Attachments

SUPPLEMENTARY INFORMATION:

1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The OSDBU administers the Department's Small and Disadvantaged Business Enterprise (DBE) Program which is designed to ensure that small businesses, including small disadvantaged and minority firms, have an equitable opportunity to participate in DOT's procurement and Federal financial assistance programs and that they receive a fair share of the resulting contract awards. Because DOT's policy is to encourage and increase DBE participation in the contracts and programs that it funds, during FY 1994, DBEs received over $2.6 billion or 14.4 percent of highway, transit, air and rail contracts from DOT-assisted State and local transportation agencies.

OSDBU developes Department wide policy and administers a number of programs and activities to implement the OSDBU's Congressional mandate of increasing the level of participation of SDBs in the Federal financial assistance and direct contracting programs of all modal administrations of DOT. OSDBU is responsible for the development and implementation of an effective program of activities directed at ensuring SBE participation in the Department's direct procurement and Federal financial assistance activities.

OSDBU monitors all DOT procurement activities that involve the participation of DBEs, including the goal settings and procurement practices of DOT financial assistance recipients, namely, State and local transportation agencies. OSDBU also serves an important function in assisting firms in their marketing of the Department and all of its operating administrations. OSDBU is also responsible for developing and administering programs to encourage, stimulate, promote and assist SDBs to obtain and manage transportation-related contracts, subcontracts and projects. The OSDBU administers the Short Term Lending Program (STLP) and the Bonding Assistance Program (BAP), two financial assistance efforts which provide assistance in obtaining short-term working capital and surety bonding for DBEs. Under the STLP, lines of credit up to $500,000 are available at prime interest rates to finance accounts receivable for transportation-related contracts. The Bonding Assistance Program enables DBEs to apply for bid, performance and payment bonds on contracts up to $1,000,000.

1.2 Program Description and Goals

OSDBU has focused considerable time and resources to increasing SDBE access to DOT financial assistance programs and contracting opportunities through the use of Transportation Marketplace Conferences and Seminars. This effort is accomplished through the use of a Cooperative Agreement with a Minority Trade Association to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors small and disadvantaged business enterprises. The Agreement includes activities such as the identification of local and regional officials who work directly with small businesses, information dissemination, outreach services to the small business community (such as SBDCs, State DOTs, etc), conference and seminar preparation and logistical planning with hotels and other conference sites. In addition, the trade association and/or Chamber of Commerce provides for the advertisement of each conference/seminar in monthly or quarterly newsletters of local organizations and provides for a follow-up evaluation of each conference subsequent to the completion of the DOT sponsored event.

The Transportation Marketplace includes the participation of other Federal, state and local agencies and private contractors seeking the involvement of small and minority firms in public and/or private solicitations. The Transportation Marketplace provides for a plenary session comprised of major dignitaries offering brief remarks, followed by a ''business fair'' where buyers and sellers of goods and services open lines of communications and match opportunities with a firm's capabilities.

Also, during the Marketplace Conferences, information is disseminated and distribution of DOT materials is provided to attendees, such as; DOT Bonding Assistance Program Brochures; DOT Bonding Assistance Fact Sheets; DOT Short-Term Lending Program Brochures; DOT Short-Term Lending Fact Sheets; Procurement Forecasts; DOT Small Business Subcontracting Opportunities Directory; Contracting with the United States Department of Transportation Booklets; DOT Bonding Assistance Program Applications; and DOT Short-Term Lending Program Applications. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive document which serves as a resource and reference tool. The Transportation Marketplace Conferences were established by the OSDBU in October 1992 to provide a mechanism for the small, minority and women business communities to have current information from National DOT regarding contract opportunities being advertised and awarded by the DOT 10 modal administrations. Also, the Conferences were seen as an opportunity for small firms to have direct contact with staff from OSDBU,

the Secretary's representatives, the DBE Liaison Officers and contracting officers from the Department. Because of the expense of traveling to Washington, D.C. to market their products, many SDBs were financially unable to spend quality time in the national offices of DOT. The Marketplace Conferences provide information relative to all modes of transportation and to potential contract possibilities. Also, the OSDBU's Minority Business Resource Center's regulations require that this office work with Trade Associations and/or Chambers of Commerce to serve our constituency. The goal is accomplished by the OSDBU working closely with Chambers of Commerce and trade associations to:

(1) Establish a communications link between DOT, its grantees, recipients, contractors, subcontractors and the small and disadvantaged business community.

(2) Increase awareness of DOT contracting opportunities and financial assistance programs by disseminating DOT marketing materials and relevant information at selected conferences, seminars and marketplace events.

(3) Identify local and regional official who work directly with small businesses and ensure their attendance and participation at the Marketplace Conferences which reinforces their commitment to the small, minority and women business community for potential contracting opportunities.

(4) Increase awareness of programs by providing DOT representation at selected conferences, seminars and marketplace events and by providing DOT ads and articles in organizations' newsletters.

(5) Develop and maintain databases of transportation-related DBEs as potential participants in DOT procurement and/or financial assistance programs that register and attend the Transportation Marketplace Conferences.

(6) Have responsibility for logistics involved in each conference, including hotel arrangements and securing facilities replete with sizeable rooms and quality sound systems.

(7) Complete a Customer-Service follow-up activity after each conference in order to receive feed-back from participants after session has ended.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from eligible Chambers of Commerce and trade associations for consideration as the Coordinator for DOT's Transportation Marketplace Conferences and Seminars. This effort shall enable the OSDBU to increase the number of small, minority and women businesses that enter into transportation-related contracts, and provide small firms with procurement information and access to the DOT Short Term Lending and Bonding Assistance Programs.

In order to have regular dialogue and direct contact with the Conference Coordinator, the selected organization must by headquartered geographically within the Washington, D.C./Baltimore, MD metropolitan area. Any personnel assigned to the project must be housed within the organization's headquarters and/or should not be over 60 miles one-way in commuting distance.

1.4 Duration of Agreement

The Cooperative Agreement will be awarded for a period of 12 months (one year) with a one year renewable option. Subsequent funding will be contingent upon satisfactory performance and the availability of funds in subsequent fiscal years.

1.5 Authority

DOT is authorized under 49 U.S.C. 322 (P.L. 97–449), to provide conferences and seminars OSDBU utilizes Cooperative Agreements with Trade Associations and Chambers of Commerce as its mechanism to deliver services to small businesses and DBEs in order to partake of transportation-related contracts.

1.6 Eligibility Requirements

An eligible applicant organization will be:

An established, non-profit, Chamber of Commerce or trade association which has the documented experience and capacity necessary to successfully operate and administer and coordinate Transportation Marketplace Conferences and Seminars nationally with minimum supervision from the OSDBU. In addition, to be eligible, a Chamber of Commerce or trade association must:

(a) Be an established 501 C(6) tax-exempt organization (provide documentation as verification);

(b) Have at least two years of documented and continuous experience prior to the date of application in providing conference and seminar planning, setting up exhibits for marketplaces or trade fairs, management and marketing assistance services and referral to technical assistance agencies of DBEs within the LOSP regional service area in which proposed services will be provided.

(c) Have an office physically located within the Washington, D.C./Baltimore metropolitan service area; and

2. Program Requirements

In conducting the activities to achieve the goals of the Transportation Marketplace Conferences and Seminars, the recipient shall be responsible for implementing the activities under 2.1 and 2.2 below. The OSDBU shall be responsible for conducting activities under 2.3.

2.1 Recipient Responsibilities

1. Each participant shall:

(a) Establish a toll free telephone line to be made available to small business interested in securing information regarding Transportation Marketplace Conferences in their areas and how they can participate in various workshops and seminars on procurement, certification, bonding and lending program.

(b) Identify hotels and other facilities where the conferences/seminars will be held and provide costs associated with these events.

(c) Whenever and wherever possible, the Contractor shall retain the services of local small, minority or women-owned businesses or non-profit organizations to assist with local in-put and involvement to make the events more acceptable to the general community. The local representative should have credibility with the community and have demonstrated expertise in working with conferences.

(d) Identify and contact individual businesses and business representative groups in the area and vicinity utilizing mailing lists provided by OSDBU's National Information Clearinghouse (NIC) as well as the Contractor's own mailing list.

(e) Coordinate with hotel management to insure that all arrangements for conferences are completed (block of guest rooms, conference rooms, etc).

(f) Handle set up and break-down of DOT OSDBU exhibit booths; handle details for planned luncheons; and assemble conference materials and brochures using information supplied by DOT/OSDBU.

(g) Idenfity Federal, State and local transportation and other agencies, in consultation with OSDBU, to be invited to participate in each conference. Also prepare tentative and final conference agendas and prepare all letters for the OSDBU Director's signature, inviting agencies and individuals to participate.

(h) Make follow-up phone calls with top agency officials to confirm their participation.

(i) Secure media, both print and broadcast, regarding the conferences and provide for a photographer throughout the entire conference

shedule. Advertisements should be published in local newspapers and in minority periodicals no later than two (2) weeks prior to the scheduled date.

(j) Set up registration, both pre and at the door, and prepare identification badges and distribut informational kits provided by DOT/OSDBU.

(k) Make a survey of the proposed conference site and the surrounding metropolitan area to ensure that there are no major small or minority or women business conferences being held that would conflict with the scheduled OSDBU conference.

(l) Provide a weekly status report on the conference preparations and submit two (2) copies of a final report and one version on diskette in MS word or compatible format for WINDOWS on each conference no later than 30 days after the conference. The report should include, but not limited to, specific procedures utilized to implement the conference, a complete listing of participants, recommendations regarding improvements, and results from conference evaluations completed by participants.

(m) Develop and implement an on-going evaluation plan for activities under the Cooperative Agreement that will provide qualitative and quantative data for effective monitoring the program.

(n) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

The OSDBU shall perform the following roles as its contribution to the attainment of Program objectives:

1. Provide orientation and training to applicant awarded funding for participation in the Transportation Marketplace Conference and Seminar project.

2. Monitor performance of successful applicant's activities and program compliance.

3. Provide for DOT materials and other information to be disseminated to small, minority and women-owned businesses that participate in one or more of the Transportation Marketplace Conferences.

4. Facilitate the exchange and transfer of successful conference activities and program information among Federal, state, local and private business officials.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization (as defined in Section 1.6 of this announcement) shall submit only one proposal for consideration by DOT.

As specified in Appendix A, applications should be double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus five bound copies, should be submitted. All pages should be numbered at the top of each page. ALL DOCUMENTS, ATTACHMENTS, OR OTHER INFORMATION PERTINENT TO THE APPLICATION MUST BE INCLUDED IN A SINGLE SUBMISSION, NOT TO EXCEED 35 PAGES.

Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged, Business Utilization, S–40, Department of Transportation, 400 7th Street, S.W., Room 9410, Washington, D.C. 20590.

Proposals must be received by DOT/OSDBU no later than February 2, 1996, 4:00 p.m., EST.

4. Selection Criteria

4.1 General Criteria

DOT will use the following criteria to rate and rank applications received in response to this announcement. Applications will be evaluated on a point system (maximum number of points = 100). The following five (5) maximum *weighted* categories will constitute DOT's selection criteria:

A. Approach (20 points)

B. Linkages (15 points)

C. Organizational Capability (20 points)

D. Staff Capabilities and Experience (30 points)

E. Costs (15 points)

1. Approach (20 points)

The application must describe the activities proposed to be implemented under the cooperative agreement and how the work will be accomplished throughout the year. Present a well-constructed plan of action. DOT will consider the extent to which the proposed objectives are specific, measurable, time-phased, consistent with OSDBU goals and the proposed activities are consistent with the applicant organization's overall mission. DOT will give priority consideration to applicants that demonstrate innovation and creativity of approach in increasing the ability of small, minority and women businesses to access information on DOT contracting opportunities and financial assistance programs as a result of the Transportation Marketplace Conference and Seminars. DOT will also rate the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

2. Linkages (15 points)

DOT will consider innovative aspects of the applicant's approach which build upon the applicant's strength(s) and facilitate and encourage linkages to existing resources available within the geographical area for the Transportation Marketplace Conferences. The applicant should describe support and intended collaboration on conference activities from DOT grantees, prime contractors, subcontractors, State DOTs, State highway supportive services contractors, SBDCs, MBDCs. In areas where colleges and universities such as; Historically black Colleges and Universities (HBCUs), Hispanic Association of Colleges and Universities' affiliations (HACUs) and Tribal-Affiliated Colleges and Universities (TACUs) are located, linkages should be established with these entities. DOT will also rate the effectiveness of the applicant's strategy to outreach to a substantial number of small businesses that can participate in DOT conferences. In rating this factor, DOT will consider the extent to which the applicant demonstrates ability to effectively access small and minority business networks that produce a broad and diverse range of small firms that can benefit from a transportation-related conference and/or seminar.

B. Organizational Capability (20 Points)

The applicant organization must have outreach resources and relevant experience in carrying out the purposes of the Transportation Marketplace Conferences and Seminars. In rating this factor, DOT will consider the extent to which the applicant's organization has recent, relevant and successful experience in coordinating and managing a transportation-related conference(s) and/or seminar for small, minority and women-owned business, either locally or nationally. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives (i.e., computer facilities, voluntary staff time, space and financial resources).

C. Staff Capability and Experience (30 Points)

The applicant organization should provide a list of proposed personnel for the project with salaries, educational levels and previous experience delineated. The applicant's project team must be well-qualified and knowledgeable (ensuring diversity) which shows evidence of the ability to deal effectively with the broad range of small and small DBE clients to be served. Resumes must be submitted for all proposed key personnel, outside consultants and subcontractors. Experience of key personnel in providing services similar in scope and nature to the proposed effort must be presented in detail. The Project Director will serve as the responsible individual for the project. He/she must be designated in the proposal and his/her resume must reflect appropriate knowledge of the industry and must have supervisory experience. DOT will consider the extent to which (a) the applicant's proposed management plan clearly delineates staff responsibilities and accountability for all work required and presents a work plan with a clear and feasible schedule for conducting all project tasks.

D. Cost (15 Points)

The budget is the applicant's estimate of the total cost of establishing and administering its participation in the Transportation Marketplace Conferences and Seminars. At this time, the OSDBU has not finalized its location for conferences during 1996, however it is anticipated that a total of four (4) will be held during the year. The tentative locations are New Orleans, San Francisco, North Carolina and Minneapolis. The applicant's budget should reflect direct costs since the conference locations are subject to change for support of personnel. However costs directly related to each conference, i.e. costs of hotel facilities, travel and per diem, will be added to the agreement on a cost incurred basis and should not be included as part of the applicant's proposal. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category not to exceed the maximum number of points allowed for each category. Applications which are not responsive to the established criteria above will be disqualified.

Appendix A—Application Form for Proposals for the Department of Transportation; Transportation Marketplace Conferences and Seminars

Proposals for the DOT Transportation Marketplace Conferences and Seminars should contain all of the following information and should be submitted in the following format.

Applications should be double spaced and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus five bound copies, should be submitted. Applications, including attachments, will be limited to 35 pages. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street, S.W., Room 9410, Washington, D.C. 20590.

Proposals Must Be Received by DOT/OSDBU No Later Than February 2, 1996, 4:00 P.M. EST.

All applications must contain the following sections in the following order.

1. Table of Contents

—Identify all parts, sections and attachments of the application.

2. Application Summary Page

—Provide a one page overview of the following:

—The applicant's proposed activities including key elements of the plan of action/methodology to achieve project objectives.

—The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

—Provide a narrative which contains specific project information as follows:

—The applicant will describe its understanding of the goals for the Transportation Marketplace Conferences and Seminars and the role of the applicant's proposal in advancing the applicant's goals.

4. Approach/Methodology

—Describe the applicant's methodology or plan of action for conducting the project in terms of the tasks to be performed.

—Describe the specific services or activities to be performed and how these services/activities will be implemented.

—Describe innovative and/or creative approaches to be implemented to increase the ability of small , and small DBES to access information on DOT contracting opportunities and financial assistance programs.

5. Linkages

—Describe or indicate evidence of linkages or collaborations developed or to be developed with State DOTs, DOT grantees, DOT prime contractors, Chambers of Commerce as well as trade associations and technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs and SBDCs and minority institutions including HBCUs, HACUs and TACUs.

6. Organizational Capabilities

—Describe recent, relevant and successful experience in coordinating and managing a transportation-related conference(s) and/or seminar for small, minority and women businesses either locally or nationally.

—Describe technical and administrative resources it plans to use in achieving proposed objectives (i.e. computer facilities, voluntary staff time, space and financial resources).

7. Staff Capabilities

—Describe the qualifications and relevant experience, in relation to project requirements, of the key personnel to be used in the project.

8. Management Plan

—Describe how personnel are to be organized in the project and how they will be used to accomplish project objectives. Outline staff responsibilities, accountability and a schedule for conducting all project tasks.

9. Budget Narrative

—Outline all proposed budget/cost information in detail.

10. Assurances Signature Form

—Complete the attached form identified as Attachment 2.

11. Certification Signature Form

—Complete the attached form identified as Attachment 3.

12. Standard Form 424

—(Request for Federal Assistance). Complete the attached Standard Form 424 identified as Attachment 4.

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

Attachment 2—Assurances

All recipients of Federal funding are required to assure that the recipient:

- Has the legal authority to apply for Federal assistance, and the institutional,

managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

• Will give the awarding agency, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

• Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

• Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

• Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900; Subpart F).

• Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

• Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

• Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

• Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a and 276a–77), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for Federally assisted construction sub-agreements.

• Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires the recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

• Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

• Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

• Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

• Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

• Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

• Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

• Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A–133. Audits of Institutions of Higher Learning and other Non-profit Institutions.

• Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

• Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.

• Will not use the assistance to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

• Will use the assistance only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of the program.

• Will comply with the Notice, Hearing, and Grievance Procedures found in § 176 of the Act.

• Will comply with the nondisplacement rules found in § 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave, an employee who is on strike or is being locked out, or an employee who is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances—Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the attached Assurances.

NOTE: This form must be signed and included in the application.

Organization Name

_____

Project Name

_____
Name and Title of Authorized Representative

_____
Signature

_____
Date

. _____

ATTACHMENT 3—Certifications

Before completing certification, please read Certification Instructions on the following page.

Certification—Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160–19211).

(1) The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default;

(2) Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification—Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about—

(a) the dangers of drug abuse in the workplace,

(b) the grantee's policy of maintaining a drug-free workplace,

(c) any available drug counseling, rehabilitation, and employee assistance programs, and

(d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) abide by the terms of the statement, and

(b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5) Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6) Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted—

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification—Lobbying Activities

As required by Section 1352, Title 31, of the US Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL. ''Disclosure Form to Report Lobbying,'' in accordance with its instructions;

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification—Signature

Before You Start. Before completing certification, please read Certification Instructions.

Note: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- Certification: Debarment, Suspension, and Other Responsibility Matters
- Certification: Drug-Free Workplace
- Certification: Lobbying Activities

Organization Name

_____
Project Name

_____
Name and Titled of Authorized Representative

_____
Signature

_____
Date

_____

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certified that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. Inability to Certify. The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. Erroneous Certification. The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. Notice of Error in Certification. The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become

erroneous by reason of changed circumstances.

4. Definitions. The terms ''covered transactions,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' '' proposal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a ''prospective primary participant in a covered transaction'' as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.

5. Certification Requirement for Subgrant Agreements. The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. Certification Inclusion in Subgrant Agreements. The applicant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,'' provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. Certification of Subgrant Principals. A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. Prudent Person Standard. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Non-Certification in Subgrant Agreements. Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

BILLING CODE 4910–62–P

ATTACHMENT 4

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4910–62–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 96–69 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Airport Traffic Control Tower at Monroe County Airport, Bloomington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change.

Notice is hereby given that on or about January 7, 1996, the Airport Traffic Control Tower (ATCT) at Bloomington, Indiana will convert to a non-federal operation. The hours of operation will be 6:30 a.m. to 9:30 p.m. Services to the aviation public in the Bloomington area, formerly provided by the FAA will be provided by the Midwest ATC Services. This information will be reflected in the FAA organization statement the next time it is reissued.

William C. Withycombe,

Acting Regional Administrator, Great Lakes Region.

[FR Doc. 96–60 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

Airport Traffic Control Tower at Delaware County Airport, Muncie, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

Notice is hereby given that on December 31, 1995, the Airport Traffic Control Tower (ATCT) at Muncie, Indiana will be permanently closed. Services to the aviation public in the Muncie area, formerly provided by Muncie ATCT, are being provided by the Indianapolis Center at Indianapolis, Indiana. This information will be reflected in the FAA organization statement the next time it is reissued.

William C. Withycombe,

Acting Regional Administrator, Great Lakes Region.

[FR Doc. 96–59 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

The Airport Traffic Control Tower at South Lake Tahoe, CA; Notice of Decommissioning

Notice is hereby given that on December 31, 1995, federal funding will be withdrawn for the Airport Traffic Control Tower at South Lake Tahoe, California. Decommissioning efforts will be initiated on January 1, 1996. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California on December 20, 1995

Lynore C. Brekke,

Acting Regional Administrator Western-Pacific Region.

FR Doc. 96–61 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–7]

Tariff Classification of Imported Glassware

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of practice.

SUMMARY: This document sets forth Customs position regarding the scope of three classes of imported glassware: ''containers of glass used for the conveyance or packing of goods'', ''preserving jars of glass'' and ''glass storage articles''. As part of Customs efforts to clearly and completely inform importers with regard to classification issues, it has been determined advisable to set forth guidelines which Customs will consider when determining whether merchandise falls within a particular class or kind of glassware.

EFFECTIVE DATE: Any changes in tariff classification resulting from the implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Metals and

Machinery Classification Branch, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the Federal Register (59 FR 51659) on October 12, 1994, Customs proposed a change of practice involving the tariff classification of three classes of imported glass articles under the Harmonized Tariff Schedule of the United States (HTSUS). That notice examined subheadings 7010.90.50 and 7013.39, HTSUS, which read as follows:

7010.90.50 carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: other: other containers (with or without their closures)

7013.39 glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): glassware of a kind used for table, (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: other

There are two types of classification by use:

(*1*) according to the use of the class or kind of goods to which the imported article belongs; and

(*2*) according to the actual use of the imported article.

Use according to the class or kind of goods to which the imported article belongs is more prevalent in the tariff schedule. A few tariff provisions expressly state that classification is based on the use of the class or kind of goods to which the imported article belongs. However, in most instances, this type of classification is inferred from the language used in a particular provision.

If an article is classifiable according to the use of the class or kind of goods to which it belongs, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See: *Kraft, Inc.,* v. *United States,* USITR, 16 CIT 483, (June 24, 1992)(hereinafter *Kraft*); *G. Heilman Brewing Co.* v. *United States,* USITR, 14 CIT 614 (Sept. 6, 1990); and *United States* v. *Carborundum Company,* 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied,* 429 U.S. 979.

Tariff classification of goods controlled by actual use is specifically provided for in sections 10.131–10.139, Customs Regulations [19 CFR 10.131–10.139]. According to these regulations, an actual use provision is satisfied if: (1) such use is intended at the time of importation, (2) the article is so used, and (3) proof of such use is furnished within three years after the date the article has been entered.

Currently, tariff classification under both subheading 7010.90.50 and 7013.39, HTSUS, is determined by the use of the class or kind of articles to which the imported merchandise belongs. As such, they are considered provisions controlled by Additional U.S. Rule of Interpretation 1(a), HTSUS.

Customs proposed that subheadings 7010.90.50 and 7013.39 would remain principal use provisions. Therefore, for an imported good to be classifiable in either of these subheadings, it must be of a class or kind classifiable in these subheadings. Whether it is of the class or kind of articles classifiable in either subheading will be determined by its principal use. Principal use will, in turn, be determined by the specific criteria formulated to determine to what class or kind the imported goods belong.

In formulating the criteria, Customs considered its prior headquarters ruling letters and court cases, comments from the public and the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89–90, 54 FR 35127, 35128 (August 23, 1989). Based on the plain language of the provision, Customs proposed that subheading 7010.90.50 includes the classes ''glass containers of a kind used for the conveyance or packing of goods'' and ''preserving jars of glass''.

Containers of a Kind Used for the Conveyance or Packing of Goods

Customs proposed understanding of the principal use of this class and the factors which indicate acceptance of a particular article in the class, was that together, they provided specific identifiable characteristics which are indicative, but not conclusive of whether a particular glass article qualifies as part of the class ''containers of glass of a kind used for the conveyance or packing of goods''. These characteristics would include, containers, of all shapes and sizes:

1. Generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colorless or colored) and manufactured by machines which automatically feed molten glass into molds where the finished articles are formed by the action of compressed air;
2. In which the ultimate purchaser's primary expectation is to discard the container after the conveyed or packed goods are used;
3. Sold from the importer to a wholesaler/distributor who then packs them with goods;
4. Sold in an environment of sale that features the goods packed in the jar and not the jar itself;
5. Used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. Capable of being used in the hot packing process; and
7. Recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Customs proposed that the physical characteristics of a particular glass article are the primary indicator of whether it belongs to the class ''containers of a kind used for the conveyance or packing of goods''. Additionally, we noted that whether a particular container is capable of being used in the ''hot packing'' process, is of limited utility when determining whether it is classifiable as a container of a kind used for the conveyance or packing of goods. Finally, Customs proposed one additional factor: that glass containers imported without their corresponding caps or lids was a physical characteristic that indicates that particular containers will be used for the conveyance or packing of goods.

Preserving Jars of Glass

Customs proposed that the principal use for the class ''preserving jars of glass'' is jars purchased and used for home canning only. Further, there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as ''preserving jars of glass''.

These would include glass articles of any shape that are between .23 and 2.2 liter sizes, and are the shape and height of regular and wide-mouth ''Mason-type'', threaded, home-canning jars with self-sealing lids. Generally, the standard jar mouth opening is about 2⅜ inches with wide mouth jars having 3 inch openings. ''Mason-type'' jars have narrower sealing surfaces and are tempered less than most commercial pint and quart-size jars. The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound. Glass articles with wire bails and glass or porcelain caps or lids were considered not classifiable as ''preserving jars of glass'' as their physical characteristics do not allow them to be recommended for home canning use.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Based on the plain language of the heading, Customs stated that subheading 7013.39 provides for the class ''glassware of a kind used for table or kitchen purposes''. This class includes articles principally used to hold or store other articles in the home. Furthermore, among these articles, certain glass storage jars may also be principally used in this fashion. Therefore, Customs proposed that glass articles which are principally used to store articles in the home are classifiable under subheading 7013.39 and identified the following characteristics which were indicative, but not conclusive of glassware of a kind used for table or kitchen purposes; glass household storage articles. They are glass articles:

1. Made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colorless, colored or of flashed glass, and may be cut, frosted, etched or engraved;
2. Having a decorative motif consistent with a kitchen decor (e.g., geese, ''country theme'', etc.);
3. Which the consumer purchases primarily to use for storage in the home;
4. Sold from the importer to a wholesaler/distributor who then sells them to a retailer;
5. Sold in an environment of sale that emphasizes the article's use or reuse as a storage article;
6. Sold to the ultimate purchaser empty;
7. Which are recognized in the trade as primarily having a household storage use; and
8. Which are imported with their caps or lids.

Analysis of Comments

Six comments were received in response to the notice, four from importing interests and two from domestic manufacturers of glassware. Substantive legal arguments contained in the comments are discussed below.

Relative Specificity of Headings 7010 and 7013

Regarding the classification of glass articles capable of both conveyance or packing of goods and household storage, a commenter has suggested that the question of classification is determined not by a use comparison, but by the specific statutory exclusion of articles classifiable in heading 7010 from classification in heading 7013. According to the commenter, the language in heading 7013 excludes all merchandise described in heading 7010. Therefore, heading 7013's relative specificity is well indicated by the statutory language itself.

Customs agrees that the language of heading 7013 excludes from classification articles classifiable in heading 7010. However, that language is qualified by the holding of *Group Italglass U.S.A.* v. *United States,* 17 CIT 226. In that case, the CIT specifically held that: ''[t]he language in heading 7010, 'of a kind used for' explicitly invokes use as a criterion for classification and under heading 7010 principal use is controlling.'' *Id* at 228. As both headings contain the language 'of a kind used for', Customs position is that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010, or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010 the language of heading 7013 precludes that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

Containers of a Kind Used for the Conveyance or Packing of Goods

Application of the Proposed Criteria

Several commenters indicated concern that the various criteria provided would be applied as ''bright line'' rules.

Customs position is that generally, the principal use criteria provided are merely characteristics, indicators of, or tools to indicate, whether a specific piece of glassware is principally used in the same manner as the class or kind the criteria describe. Additionally, the statement that the principal use criteria are merely indicative and not conclusive, clearly demonstrates that the characteristics are guidelines and not a ''litmus test'' or ''bright line'' rules for classification purposes.

As a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of characteristics indicative, but not conclusive of, the physical form of articles belonging to the class or kind ''containers of a kind used for the conveyance or packing of goods'' are enumerated in EN 70.10 and under the ''physical characteristics'' criteria. Should, however, an exception arise and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Physical Description

It has been suggested that the first criterion, the physical characteristics of the class ''containers of glass used for the conveyance or packing of goods'' is too narrow for the entire class. Rather, the entire class includes 4 different types of containers used for the commercial conveyance of liquid and solid products. These types are described in the ENs to heading 7010, and include:

(A) Carboys, demijohns, bottles (including syphon vases), phials, and similar containers * * * of all shapes and sizes * * * used as containers for * * * (see list).

(B) Jars, pots, and similar containers * * * used for the commercial conveyance of certain foodstuffs, cosmetic or toilet preps, pharmaceutical products, polishes, cleaning preps, etc.

(C) Ampoules usually obtained from drawn glass and intended to serve after sealing as containers for serums, etc.

(D) Tubular containers and similar containers.

Additional descriptions of how each kind of container or jar is produced, its typical closure design and decorative features are included in these breakouts. Based on these expressed concerns, it has been suggested that reference to the ENs with an explanation, should replace this criterion. Customs agrees with the commenters' observations and reiterates its position that the physical description provided in the proposed notice, together with the descriptions found in EN 70.10, are indicative, but not conclusive, physical characteristics of glass articles belonging to the class ''containers of a kind used for the conveyance or packing of goods''.

Ultimate Purchaser's Expectation

A commenter has suggested that this criterion be eliminated because the language ''***discard containers after use'' prevents recyclable containers from classification as containers of a kind used for the conveyance or packing of goods.

Customs position is that for heading 7010 purposes, the term ''discards'' in the phrase ''. . . to convey or pack a product to a consumer who uses the product and then discards the container'' includes glass articles otherwise described as ''containers'' which are ''discarded'' for recycling.

Importer-Wholesaler/Distributor

A commenter has suggested that this criterion is a misapplication of Additional U.S. Rule of Interpretation 1(a) because it refers to the distribution by ''importers''. The commenter indicates that Additional U.S. Rule 1(a) states that review applies to all goods of the class or kind, whether imported or not. Additionally, the commenter contends that this criterion suggests the application of actual use to the classification of glassware. Finally, the commenter requests guidance on what evidence Customs would expect importers to provide regarding channels of trade.

Customs agrees with the comments regarding Additional U.S. Rule of Interpretation 1(a). Additionally, Customs position is that this criterion is an explanation of the pattern or channel of trade that goods of this class generally follow. While not all goods of this class follow this channel of trade, Customs believes that enough do for this pattern to be considered indicative but not conclusive of articles belonging to the class. Finally, Customs believes evidence will be solicited on a case-by-case basis.

Environment of Sale/Channel of Trade

According to one commenter, this criterion ignores the commercial realities of the food and beverage market in that containers are often a vehicle used by the packager to differentiate its product from others.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the headings and any heading or chapter notes. While the ''commercial realities'' of the glass container market may require redesign of glass articles, for tariff classification purposes, the application of the GRIs together with Additional U.S. Note 1(a), requires that if the article's form is altered in a way that no longer indicates it is principally used as a container, it must be reclassified. While, as one of its uses, a glass article may be used to pack and convey a good to a consumer, that use must be its principal one for it to belong to the class ''glass articles of a kind used for the conveyance or packing goods''.

Lids

Commenters claim that Customs addition of a factor relating to the importation of lids with containers is in direct conflict with the statutory language of heading 7010, which states, in pertinent part, *** ''with or without their lids''. They believe that the heading language makes it clear that Congress intended that closures be disregarded when determining the class of a given container. Additionally, use of this criterion could lead to a container being classified differently depending upon whether it was imported with or without a lid. Finally, they assert that this is, in effect, an actual use test.

Instead of reviewing lids, the commenters suggest considering a container's finish, the portion of the container where the cap or lid will be attached. Designs include threaded, beaded and a variety of other finishes. Because closures are created to match standard finishes, the commenters suggest that the proposed criterion should state that all containers with a ''standard finish'' are classifiable as containers used for the conveyance or packing of goods. The commenters agree that it is generally true that containers for the conveyance or packing of goods are imported without their lids. They believe, however, that there is a danger of undue focus on the presence or absence of a lid, as a lid's presence or absence is one of the easily identifiable criteria. Finally, this criterion would increase the possibility that drinking glasses which are always imported without lids, would be classified incorrectly.

Finally, one commenter has requested that Customs clarify its distinction by stating that the absence of lids or caps is only a ''plus'' factor pointing toward classification in heading 7010, but that the presence of a lid or cap in no way points against heading 7010 classification. The commenter then suggests that ultimately, the absence or presence of a lid does not affect the ''reusablitity'' or ''function'' of a container and therefore should not carry much weight in determining a container's classification.

After careful consideration of the comments, Customs withdraws this criterion.

Preserving Jars of Glass

Class or Kind vs. eo nomine

One commenter disagrees with Customs characterization of preserving jars of glass as a use provision and instead claims that the provision is *eo nomine.* According to the commenter, the general rule for classification under an *eo nomine* provision is that the provision includes all forms of the named article. The commenter further states that bail and trigger jars are well known in commerce as having been designed for use in the preserving of foodstuffs. Therefore, it is irrelevant whether the jars are principally used as such.

As previously discussed in the relative specificity section, Customs position is that *Italglass* requires the application of principal use to all classes in heading 7010.

Scope of the Class ''Preserving Jars of Glass''

Another commenter argues that Customs definition of preserving jars of glass as home canning jars is too restrictive. Customs definition was: to prepare food for future use, as by canning or salting to treat fruit or other foods so as to prevent decay. The commenter suggests a broader definition: preserving means ''food preservation''. Food preservation should be defined as the protection of food from spoilage. Therefore, any glass container used to protect food from spoilage is a preserving jar.

Customs is of the opinion that its proposed definition is the common dictionary and trade definition of preserving. Customs does not agree with

the commenter's definition of preserving as it is entirely too broad. EN 70.10's inclusion of the phrase ''* * * Jars, pots, and similar containers * * * used for the commercial conveyance of certain foodstuffs'' clearly indicates that not all glass articles capable of protecting food from spoilage belong to the class ''preserving jars of glass''. This language and application of the ENs clearly indicate that the commenter's broad definition was not the intent of the EN drafters. Furthermore, Congress' adoption of a separate class for preserving jars, clearly demonstrates their intent to narrow the scope of both the conveyance and packing provision and the preserving jar provision.

USDA Bulletin

Several commenters state that Customs should not rely on the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning: Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539–1, May 1989), [USDA bulletin] because it does not explain why bail and trigger jars are not recommended for home canning. They suggest that replacement gaskets may no longer be manufactured for use with the jars and that a higher risk of contamination exists with these jars because they have to be sealed by pushing down the clamp after being removed from the canner. Also, reliance on the USDA pamphlet is severely limited by the findings of *Nestle Refrigerated Food Co.* v. *United States,* U.S. CIT, Slip Op. 94–118 (July 20, 1994). The court stated that administrative interpretations not related to tariff purposes are not determinative of Customs classification disputes. Reference is also made to different sources on preserving which indicate bail and trigger jars are usable for home canning purposes. One commenter suggests that the following should be the standards for preserving jars:

1. The jars are specifically designed, as evidenced by patents or other reliable documents, for use as home canning or preserving jars;
2. Instructions for using the jars in the home preserving process are provided; and
3. Rubber seals or lids are readily available at the start of each home canning season from the sources where the consumer purchased the jars.

Customs position is that reliance on the USDA bulletin does not conflict with the holding of *Nestle Refrigerated Food Co.* v. *United States.* The definition of preserving, was not provided by the USDA bulletin, but rather by consulting the dictionary and the common and commercial meaning. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogasku (USA) Inc.* v. *United States,* 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons* v. *United States,* 69 CCPA 128, 673 F.2d 1268 (1982). Customs has cited the USDA bulletin because various home canning nutritionists and food scientists consulted stated that the USDA bulletin provided the guidelines that home canners, and those who create the necessary jars, rely on to create the preserves as well as the jars themselves.

Moreover, Customs has independently reviewed the scientific studies relied upon for the conclusion drawn regarding wire and bail trigger glass jars in the USDA bulletin. Customs position is that the scientific evidence supports the conclusion that wire bail and trigger jars should not be principally used as home canning jars. Therefore, the jars cannot be classified as such.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Scope of Heading 7013

One commenter states that Customs misunderstands the scope of heading 7013. That commenter believes that none of the exemplars in EN 70.13 relate to the holding or storage of any article in the home. Rather, the commenter contends that all but one of the articles listed in EN 70.13(1) are articles which are used to prepare and serve food. Therefore, glass household storage articles are not classifiable in heading 7013.

As further evidence that glass household articles are not classifiable in heading 7013, the commenter cites to heading 6911 and claims that headings 7013 and 6911 are *ejusdem generis* and therefore their ENs should ''mirror'' each other. However, the commenter notes, EN 69.11, specifically provides for storage jars. Because EN 70.13 does not, the commenter believes it was the drafters intent to omit glass household storage articles from heading 7013. The commenter suggests that the drafters clearly included ceramic preserving jars and storage jars within the scope of headings 6911 and 6912, and excluded them from heading 6909. According to the commenter, the similarity to the exemplars in ENs 69.11, 69.12 and 70.13 is striking. Therefore, the omission of preserving and storage jars from EN 70.13 is significant. The commenter believes that glass storage jars are included in the scope of glass preserving jars and states that this follows from the fact that the storage of food products prevents spoilage (drawing moisture, infestation with vermin, etc.).

Customs position is that the exemplars from EN 70.13 are merely that, examples. They are not all inclusive. Additionally, Customs believes that the following EN 70.13 exemplars all are used to store various food stuffs or articles in the home:

(1) Table or kitchen glassware, e.g. * * * decanters, infants' feeding bottles, pitchers, jugs, * * * cake-stands, * * * butter dishes, oil or vinegar cruets, * * * salt cellars, * * * sweetmeat boxes, graduated kitchenware, * * * ice-buckets.

Furthermore, Customs believes that the commenter's direct comparison of the ENs 69.09, 69.11 and 69.12 to 70.10 and 70.13 was clearly not the intent of the EN authors. Were that the authors' intent, they would have applied the ENs for headings 69.09 and 69.13 *mutatis mutandis* to those of headings 70.10 and heading 70.13.

Customs position is that heading 7013 provides for glass storage articles within the class glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes.

Decorative Motif

One commenter was concerned because many household storage articles are very simple, strictly utilitarian and have no decorative motif. Because the criterion of a decorative motif is objective and easily determined, the commenter contends that there is a risk of it being given undue importance or becoming the sole criterion. Additionally, examples of specific decorative motifs are unacceptable because of a danger that household storage jars having unlisted motifs will be misclassified. Therefore, criterion 2 should be eliminated and the following be added to criterion 1: ''painted or otherwise having a decorative motif''. Customs agrees with the comment and has made the change.

Distribution Channels

One commenter was concerned about this criterion because while it may identify the most common distribution channels for articles imported for ultimate sale in the retail market, it excludes articles imported directly by large retail chains.

Customs recognizes that the distribution channel described is a general rule and does not preclude from consideration for this class glassware distributed through other channels.

Lids

One commenter states that Customs lid criterion creates the expectation that heading 7013 articles are always imported with their lids. Although it is true that glass containers imported for use in conveying or packing goods are generally imported without their lids, it does not follow that table or kitchen storage containers are necessarily imported with their lids. The commenter believes the only clear statement that can be made about lids is that glass household storage articles are imported without their lids less frequently than are containers for the conveyance or packing of goods. As previously noted, this criterion has been withdrawn.

Conclusion

After careful review and consideration of all the comments received in response to the notice of proposed position, a review of Customs implementation of its prior understanding of the 3 classes and a review of Customs rulings, Customs adopts, with some modification, its proposed position.

Subheadings 7010.90.50 and 7013.39; Relative Specificity

Based on the *Italglass* holding, Customs concludes that the language ''of a kind used for'' explicitly indicates that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010 or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010, the language of heading 7013 precludes that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

Containers of a Kind Used for the Conveyance or Packing of Goods

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind ''containers of a kind used for the conveyance or packing of goods'' are enumerated in EN 70.10 and under the ''physical characteristics'' criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that generally, the principal use criteria provided are merely characteristics, indicators of, or tools to indicate, whether a specific piece of glassware is principally used in the same manner as the class or kind the criterion describe. Further, Customs adopts the following criteria as indicative, but not conclusive of whether a particular glass article qualifies as part of the class ''containers of glass of a kind used for the conveyance or packing of goods'':

1. Generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colourless or coloured) and manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air;
2. The ultimate purchaser's primary expectation is to discard/recycle the container after the conveyed or packed goods are used;
3. Sold from the importer to a wholesaler/distributor who then packs the container with goods;
4. Sold in an environment of sale that features the goods packed in the container and not the jar itself;
5. Used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. Capable of being used in the hot packing process; and
7. Recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Preserving Jars of Glass

Customs concludes that the term ''preserving'' is described, in pertinent part, as ''to prepare food for future use, as by canning or salting; to treat fruit or other foods so as to prevent decay''.

Based upon the above definition, the reliance on the guidelines espoused in the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning: Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539–1, May 1989), by various home canning nutritionists and food scientists consulted, and an independent review of the scientific evidence the USDA guidelines are based upon, Customs concludes that there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as ''preserving jars of glass''. They include glass articles that are between .23 and 2.2 liter sizes and are the shape, round or square, (eg: not multi-sided, faceted or decorated) and height of regular and wide-mouth ''Mason-type'' jars.

Generally, the standard jar mouth opening is about 2⅜ inches with wide mouth jars having 3 inch openings. ''Mason-type'' jars have narrower sealing surfaces and are tempered less than containers belonging to the class ''containers of a kind used for the conveyance or packing of goods''. The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound.

Customs concludes, therefore, that jars with wire bail and trigger closures are not included within the scope of the class ''preserving jars of glass'' but rather within the scope of the class ''glassware of a kind used for table or kitchen purposes'' classifiable under heading 7013. The physical form of the wire bail and trigger jar indicates its principal use as a storage article.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind ''containers of a kind used for the conveyance or packing of goods'' are enumerated in EN 70.13 and under the ''physical characteristics'' criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that heading 7013 includes the class ''glass storage articles''. Additionally, Customs adopts the following principal use criteria:

1. Made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They

may also be colorless, colored or of flashed glass, and may be cut, frosted, etched, engraved, painted or otherwise have a decorative motif.

2. The consumer purchases primarily to use for storage;

3. Sold from the importer to a wholesaler/distributor who then sells them to a retailer;

4. Sold in an environment of sale that emphasizes the article's use or reuse as a storage article;

5. Sold to the ultimate purchaser empty; and

6. Recognized in the trade as primarily having a storage use.

Effect on Rulings: This document revokes Headquarters Ruling Letters, 951721 dated January 12, 1993; 952675 dated January 15, 1993; 953280 dated February 5, 1993; 951991 dated March 2, 1993; 954293 dated June 30, 1993; 954792 dated November 24, 1993; 953952 dated September 21, 1994, and any other rulings which are not consistent with these guidelines.

EFFECTIVE DATE: Any changes in tariff classification resulting from the implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

George J. Weiss,

Commissioner of Customs.

Approved: November 29, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–31593 Filed 12–29–95; 1:41 pm]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 4, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31585 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 5, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31586 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 12, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31587 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 16, 1996.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31588 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 19, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31589 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 23, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31590 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, January 23, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31591 Filed 12–29–95; 2:11 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 26, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Lynn K. Gilbert,
Deputy Secretary of the Commission.

[FR Doc. 95–31592 Filed 12–29–95; 8:45 am]

BILLING CODE 6351–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATES: 10:00 a.m. Wednesday, January 10, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Approval of 1996 AHP District Priorities
- FHLBank of Dallas' Budget Amendment Request
- Appointment of FHLBank Public Interest Directors
- Appointment of FHLBank Chairs

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,
Managing Director.

[FR Doc. 95–31597 Filed 12–29–95; 3:58 pm]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, January 5, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 28, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31582 Filed 12–29–95; 2:10 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 8, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 28, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31596 Filed 12–29–95; 2:57 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 1, 8, 15, and 22, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 1

Friday, January 5

10:00 a.m.

Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting) (Contact: Scott Newberry, 301–415–1183)

Week of January 8—Tentative

There are no meetings scheduled for the Week of January 8.

Week of January 15—Tentative

There are no meetings scheduled for the Week of January 15.

Week of January 22—Tentative

There are no meetings scheduled for the Week of January 22.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTRACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: December 29, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–31594 Filed 12–29–95; 2:12 pm]

BILLING CODE 7590–01–P

Corrections

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission and the Puerto Rico Planning Board

[FERC Docket No. CP95-35-000; PRPB Docket No. 94-62-1219-JPM]

EcoEléctrica, L.P.; Notice of Comment Period Extension

Correction

In notice document 95–31123 appearing on page 66543 in the issue of Friday, December 22, 1995, the Docket numbers should have appeared as set forth above.

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

Correction

In rule document 95–30665 beginning on page 65456 in the issue of Tuesday, December 19, 1995, make the following correction:

PART 50—[CORRECTED]

On page 65468, in the first column, in the authority citation for Part 50, in the first paragraph, in the fourth line, ''83 Stat. 1444'' should read ''83 Stat. 444''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–23]

Removal of Class E Airspace; Marietta, GA

Correction

In rule document 95–30919 appearing on page 65526 in the issue of Wednesday, December 20, 1995, make the following correction:

In the first column, under **EFFECTIVE DATE:**, in the first line, ''9091'' should read ''0901''.

BILLING CODE 1505–01–D

federal register

Wednesday
January 3, 1996

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Employee Stock Ownership Plans; Extension of Comment Period; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 92–024]

Federal Acquisition Regulation; Employee Stock Ownership Plans; Extension of Comment Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Extension of comment period for proposed rule.

SUMMARY: On November 7, 1995, at 60 FR 56216, a proposed rule concerning Employee Stock Ownership Plans was published in the Federal Register. This notice advises the public that the public comment period on this rule is being extended from January 8, 1996, to January 31, 1996.

DATES: Comments: The public comment period is extended through January 31, 1996.

ADDRESSES: All interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Sts. NW., Room 4035, ATTN: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR Case 92–024 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 92–024.

Dated: December 27, 1995.

Ralph Destefano,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 96–51 Filed 1–2–96; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Wednesday
January 3, 1996

Part III

The President

Executive Order 12984—Adjustments of Certain Rates of Pay and Allowances

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

Presidential Documents

Title 3—

The President

Executive Order 12984 of December 28, 1995

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101–194; section 301(a) of Public Law 102–40; section 633 of Public Law 104–52; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5304, 5304a, 5318, and 5382 of title 5, United States Code; section 3963 of title 22, United States Code; section 461(a) of title 28, United States Code; and section 1009 of title 37, United States Code; and sections 7306 and 7404 of title 38, United States Code, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(b), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions, which remain unchanged pursuant to section 633 of Public Law 104–52, are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

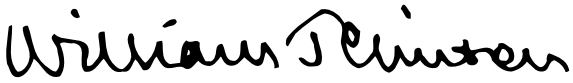
Sec. 4. *Uniformed Services.* Pursuant to section 1009 of title 37, United States Code, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)(1)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the Federal Register.

Sec. 6. *Effective Dates.* Schedule 8 is effective on January 1, 1996. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1996.

Sec. 7. *Prior Order Superseded.* Executive Order No. 12944 of December 28, 1994, is superseded.



THE WHITE HOUSE,

December 28, 1995.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

	1	2	3	4	5	6	7	8	9	10
GS-1	$12,384	$12,797	$13,208	$13,619	14,032	$14,274	$14,679	$15,089	$15,107	15,489
2	13,923	14,255	14,717	15,107	15,274	15,723	16,172	16,621	17,070	17,519
3	15,193	15,699	16,205	16,711	17,217	17,723	18,229	18,735	19,241	19,747
4	17,055	17,624	18,193	18,762	19,331	19,900	20,469	21,038	21,607	22,176
5	19,081	19,717	20,353	20,989	21,625	22,261	22,897	23,533	24,169	24,805
6	21,269	21,978	22,687	23,396	24,105	24,814	25,523	26,232	26,941	27,650
7	23,634	24,422	25,210	25,998	26,786	27,574	28,362	29,150	29,938	30,726
8	26,175	27,048	27,921	28,794	29,667	30,540	31,413	32,286	33,159	34,032
9	28,912	29,876	30,840	31,804	32,768	33,732	34,696	35,660	36,624	37,588
10	31,839	32,900	33,961	35,022	36,083	37,144	38,205	39,266	40,327	41,388
11	34,981	36,147	37,313	38,479	39,645	40,811	41,977	43,143	44,309	45,475
12	41,926	43,324	44,722	46,120	47,518	48,916	50,314	51,712	53,110	54,508
13	49,856	51,518	53,180	54,842	56,504	58,166	59,828	61,490	63,152	64,814
14	58,915	60,879	62,843	64,807	66,771	68,735	70,699	72,663	74,627	76,591
15	69,300	71,610	73,920	76,230	78,540	80,850	83,160	85,470	87,780	90,090

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$69,300	$56,154	$45,502	$36,870	$29,876	$26,708	$23,876	$21,344	$19,081
2	71,379	57,839	46,867	37,976	30,772	27,509	24,592	21,984	19,653
3	73,520	59,574	48,273	39,115	31,695	28,335	25,330	22,644	20,243
4	75,726	61,361	49,721	40,289	32,646	29,185	26,090	23,323	20,850
5	77,998	63,202	51,213	41,498	33,626	30,060	26,873	24,023	21,476
6	80,338	65,098	52,749	42,742	34,634	30,962	27,679	24,744	22,120
7	82,748	67,051	54,332	44,025	35,674	31,891	28,509	25,486	22,784
8	85,230	69,062	55,962	45,345	36,744	32,847	29,364	26,250	23,467
9	87,787	71,134	57,641	46,706	37,846	33,833	30,245	27,038	24,171
10	90,090	73,268	59,370	48,107	38,981	34,848	31,153	27,849	24,896
11	90,090	75,466	61,151	49,550	40,151	35,893	32,087	28,685	25,643
12	90,090	77,730	62,985	51,037	41,355	36,970	33,050	29,545	26,413
13	90,090	80,062	64,875	52,568	42,596	38,079	34,041	30,431	27,205
14	90,090	82,464	66,821	54,145	43,874	39,222	35,063	31,344	28,021

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)*

Deputy Under Secretary for Health	$117,692**
Associate Deputy Under Secretary for Health	112,726***
Assistant Under Secretaries for Health	109,404***

	Minimum	Maximum
Medical Directors	$93,344	$105,792
Service Directors	81,278	100,939
Director, National Center for Preventive Health	69,300	100,939

Physician and Dentist Schedule

Director Grade	$81,278	$100,939
Executive Grade	75,051	95,649
Chief Grade	69,300	90,090
Senior Grade	58,915	76,591
Intermediate Grade	49,856	64,814
Full Grade	41,926	54,508
Associate Grade	34,981	45,475

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$69,300	$90,090
Senior Grade	58,915	76,591
Intermediate Grade	49,856	64,814
Full Grade	41,926	54,508
Associate Grade	34,981	45,475

Physician Assistant and Expanded-Function Dental Auxiliary Schedule****

Director Grade	$69,300	$90,090
Assistant Director Grade	58,915	76,591
Chief Grade	49,856	64,814
Senior Grade	41,926	54,508
Intermediate Grade	34,981	45,475
Full Grade	28,912	37,588
Associate Grade	24,880	32,341
Junior Grade	21,269	27,650

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Service. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $115,700.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $108,200.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

ES-1	$94,800
ES-2	99,300
ES-3	103,800
ES-4	109,400
ES-5	114,000
ES-6	115,700

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

level I	$148,400
level II	133,600
level III	123,100
level IV	115,700
level V.	108,200

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

Vice President.	$171,500
Senators.	133,600
Members of the House of Representatives	133,600
Delegates to the House of Representatives	133,600
Resident Commissioner from Puerto Rico.	133,600
President pro tempore of the Senate	148,400
Majority leader and minority leader of the Senate	148,400
Majority leader and minority leader of the House of Representatives	148,400
Speaker of the House of Representatives	171,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

Chief Justice of the United States	$171,500
Associate Justices of the Supreme Court.	164,100
Circuit Judges	141,700
District Judges.	133,600
Judges of the Court of International Trade	133,600

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
(Effective on January 1, 1996)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10**	$7,117.80	$7,368.30	$7,368.30	$7,368.30	$7,368.30	$7,651.20	$7,651.20	$8,075.10	$8,075.10	$8,652.60	$8,652.60	$9,231.90*	$9,231.90*	$9,231.90*	$9,807.00*
O-9	6,308.10	6,473.40	6,611.40	6,611.40	6,611.40	6,779.40	6,779.40	7,061.70	7,061.70	7,651.20	7,651.20	8,075.10	8,075.10	8,075.10	8,652.60
O-8	5,713.50	5,885.10	6,024.60	6,024.60	6,024.60	6,473.40	6,473.40	6,779.40	6,779.40	7,061.70	7,368.30	7,651.20	7,839.60	7,839.60	7,839.60
O-7	4,747.50	5,070.30	5,070.30	5,070.30	5,297.70	5,297.70	5,604.60	5,604.60	5,885.10	6,473.40	6,918.60	6,918.60	6,918.60	6,918.60	6,918.60
O-6	3,518.70	3,866.10	4,119.30	4,119.30	4,119.30	4,119.30	4,119.30	4,119.30	4,259.40	4,932.90	5,184.60	5,297.70	5,604.60	5,794.50	6,078.60
O-5	2,814.30	3,304.50	3,533.10	3,533.10	3,533.10	3,533.10	3,639.90	3,836.10	4,093.20	4,399.50	4,651.20	4,792.50	4,959.90	4,959.90	4,959.90
O-4	2,372.10	2,888.70	3,081.30	3,081.30	3,138.60	3,276.90	3,500.70	3,697.50	3,866.10	4,035.90	4,146.90	4,146.90	4,146.90	4,146.90	4,146.90
O-3***	2,204.40	2,464.80	2,634.90	2,915.40	3,054.90	3,164.40	3,335.70	3,500.70	3,586.50	3,586.50	3,586.50	3,586.50	3,586.50	3,586.50	3,586.50
O-2***	1,922.40	2,099.10	2,522.40	2,607.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00	2,661.00
O-1***	1,668.90	1,737.30	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10	2,099.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$2,915.40	$3,054.90	$3,164.40	$3,335.70	$3,500.70	$3,639.90	$3,639.90	$3,639.90	$3,639.90	$3,639.90	$3,639.90	$3,639.90
O-2E	-	-	-	2,607.00	2,661.00	2,745.30	2,888.70	2,999.40	3,081.30	3,081.30	3,081.30	3,081.30	3,081.30	3,081.30	3,081.30
O-1E	-	-	-	2,099.10	2,243.10	2,325.60	2,409.90	2,493.30	2,607.00	2,607.00	2,607.00	2,607.00	2,607.00	2,607.00	2,607.00

* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $10,863.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$3,833.10	$3,978.30	$4,093.50	$4,265.70
W-4	$2,246.10	$2,409.90	$2,409.90	$2,464.80	$2,576.70	$2,690.40	$2,803.20	$2,999.40	$3,138.60	$3,248.70	$3,335.70	3,443.40	3,558.90	3,669.60	3,836.10
W-3	2,041.20	2,214.30	2,214.30	2,243.10	2,268.90	2,435.10	2,576.70	2,661.00	2,745.30	2,827.50	2,915.40	3,029.10	3,138.60	3,138.60	3,248.70
W-2	1,788.00	1,934.10	1,934.10	1,990.50	2,099.10	2,214.30	2,298.30	2,382.60	2,464.80	2,551.50	2,634.90	2,718.00	2,827.50	2,827.50	2,827.50
W-1	1,489.20	1,707.90	1,707.90	1,850.40	1,934.10	2,017.20	2,099.10	2,186.10	2,268.90	2,353.50	2,435.10	2,522.40	2,522.40	2,522.40	2,522.40
ENLISTED MEMBERS															
E-9*	-	-	-	-	-	-	$2,613.00	$2,671.50	$2,732.10	$2,794.80	$2,857.50	$2,912.70	$3,065.40	$3,184.80	$3,363.90
E-8	-	-	-	-	-	$2,190.90	2,253.90	2,313.30	2,373.30	2,436.00	2,491.80	2,553.00	2,703.00	2,823.60	3,003.90
E-7	$1,529.70	$1,651.50	$1,712.40	$1,772.70	$1,833.00	1,891.50	1,952.10	2,013.00	2,103.90	2,163.30	2,223.30	2,252.40	2,403.60	2,523.30	2,703.00
E-6	1,316.10	1,434.60	1,494.30	1,557.90	1,616.40	1,674.30	1,735.80	1,825.20	1,882.50	1,943.40	1,972.80	1,972.80	1,972.80	1,972.80	1,972.80
E-5	1,154.70	1,257.00	1,318.20	1,375.50	1,466.10	1,525.80	1,586.10	1,644.30	1,674.30	1,674.30	1,674.30	1,674.30	1,674.30	1,674.30	1,674.30
E-4	1,077.00	1,137.60	1,204.80	1,297.50	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80	1,348.80
E-3	1,014.90	1,070.70	1,113.30	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40	1,157.40
E-2	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80	976.80
E-1**	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50	871.50
E-1***	806.10	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,104.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II--BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without dependents Full rate*	Without dependents Partial rate**	With dependents
COMMISSIONED OFFICERS			
O-10	$764.40	$50.70	$941.10
O-9	764.40	50.70	941.10
O-8	764.40	50.70	941.10
O-7	764.40	50.70	941.10
O-6	701.40	39.60	847.20
O-5	675.30	33.00	816.60
O-4	626.10	26.70	720.00
0-3	501.90	22.20	595.80
O-2	397.80	17.70	508.80
O-1	335.10	13.20	454.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3E	$541.50	$22.20	$640.20
O-2E	460.50	17.70	577.80
O-1E	396.00	13.20	533.70
WARRANT OFFICERS			
W-5	$636.00	$25.20	$694.80
W-4	564.90	25.20	637.20
W-3	474.60	20.70	583.80
W-2	421.50	15.90	537.00
W-1	352.80	13.80	464.40
ENLISTED MEMBERS			
E-9	$463.80	$18.60	$611.40
E-8	426.00	15.30	563.70
E-7	363.60	12.00	523.20
E-6	329.40	9.90	483.90
E-5	303.60	8.70	434.70
E-4	264.00	8.10	378.30
E-3	259.20	7.80	351.90
E-2	210.60	7.20	335.10
E-1>4	187.50	6.90	335.10
E-1<4	187.50	6.90	335.10

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by section 403 of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under section 403(b) or (c) of title 37, United States Code, are not entitled to the full rate of basic allowance for quarters, is authorized by section 1009(c)(2) of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

Part III--BASIC ALLOWANCE FOR SUBSISTENCE

Officers (per month) $149.08

Enlisted Members (per day):

	E-1 (less than 4 months of active duty)	All Other Enlisted
When on leave or authorized to mess separately	$6.57	$7.12
When rations in-kind are not available	7.41	8.03
When assigned to duty under emergency conditions where no messing facilities of the United States are available	9.82	10.63

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $558.04.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1996)

Locality Pay Area[1]	Rate
Atlanta,GA	5.14%
Boston-Worcester-Lawrence, MA-NH-ME-CT	7.68%
Chicago-Gary-Kenosha, IL-IN-WI	7.63%
Cincinnati-Hamilton, OH-KY-IN	5.87%
Cleveland-Akron, OH	4.67%
Columbus, OH	5.84%
Dallas-Fort Worth, TX	6.23%
Dayton-Springfield, OH	5.72%
Denver-Boulder-Greeley, CO	6.34%
Detroit-Ann Arbor-Flint, MI	7.26%
Houston-Galveston-Brazoria, TX	9.40%
Huntsville, AL	4.84%
Indianapolis, IN	5.04%
Kansas City, MO-KS	4.38%
Los Angeles-Riverside-Orange County, CA	8.15%
Miami-Fort Lauderdale, FL	5.94%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	8.05%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	6.90%
Portland-Salem, OR-WA	5.20%
Richmond-Petersburg, VA	4.41%
Sacramento-Yolo, CA	5.81%
St. Louis, MO-IL	4.72%
San Diego, CA	6.76%
San Francisco-Oakland-San Jose, CA	8.97%
Seattle-Tacoma-Bremerton, WA	6.44%
Washington-Baltimore, DC-MD-VA-WV	6.04%
Rest of U.S.	4.13%

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 95–31595
Filed 12–29–95; 3:08 pm]
Billing code 3195–01–C

Rules and Regulations

Federal Register
Vol. 61, No. 2
Wednesday, January 3, 1996

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV95–928–1–FR; Amendment 1]

Papayas Grown in Hawaii; Reduction of Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the expenses and rate of assessment previously established under Marketing Order No. 928 for the 1995–96 fiscal year. This rule reduces the budget of expenses and assessment rate which papaya handlers will be assessed for funding expenses by the Papaya Administrative Committee (Committee) that are reasonable and necessary to administer the program.

EFFECTIVE DATE: July 1, 1995 through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, or Fax # (209) 487–5906; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127, or Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 producers of papayas in Hawaii, and approximately 60 handlers regulated under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these producers and handlers may be classified as small entities.

The papaya marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaiian papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. In recommending an assessment rate, the Committee also considered funds available in a monetary reserve that could be used to pay expenses.

The Committee met on April 28, 1995, and unanimously recommended expenses totaling $562,044 for its 1995–96 budget. The Committee met again on July 20, 1995, and unanimously recommended a new budget because the original budget contained inaccuracies. The revised recommendation contained expenses totaling $465,800 for the 1995–96 budget. This was a $123,400 reduction in expenses compared to the 1994–95 budget of $589,200.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1995–96 fiscal

year, which was the same as was recommended for the 1994–95 fiscal year.

An interim final rule was published in the Federal Register (60 FR 43351, August 21, 1995). A final rule was published in the Federal Register on September 28, 1995 (60 FR 50078).

The Committee met again on September 28, 1995, and recommended revising the budget to reduce expenses to $435,800, and the assessment rate to $.0059 per pound for the 1995–96 fiscal year, which is $.0030 less than was recommended for the 1994–95 fiscal year. The Committee recommended reducing their expenses for research and development by $30,000, and reducing the reserve carryover for the following year to $26,597. There was some concern expressed at the meeting as to whether the Committee would have enough income to meet expenses. Ultimately, by a vote of eight to three with one abstention, the Committee recommended the reduced expenses of $435,800 and an assessment rate of $.0059.

The assessment rate, when applied to anticipated shipments of 33 million pounds, yields $194,700 in assessment income. Other sources of program income include $40,000 from the Hawaii Department of Agriculture, $57,000 from the Department's Foreign Agricultural Service, $7,800 from the Japanese Inspection program, $3,000 in interest income, and $4,766 from the County of Hawaii. Thus, total income is expected to be $307,266. The Committee plans to use money from its reserve account to meet its estimated expenses for the year.

Major expense categories for the 1995–96 fiscal year include $165,500 for the market expansion program, $115,000 for research and development, and $67,000 for salaries. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $26,597, will be within the maximum permitted by the order of one fiscal year's expenses.

A proposed rule was published in the Federal Register on November 6, 1995 (60 FR 56003). That rule provided a 30-day comment period. No comments were received.

This action will reduce the assessment obligation imposed on handlers. The assessments will be uniform for all handlers. The assessment costs are expected to be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 533, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This action reduces the expenses and rate of assessment previously established under the marketing order for the 1995–96 fiscal year; (2) the 1995 crop year began on July 1, 1995, and the marketing order requires that the rate of assessment apply to all assessable papayas during the crop year; and (3) handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the Federal Register as a proposed rule. The proposed rule provided a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 928.225 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 928.225 Expenses and assessment rate.

Expenses of $435,800 by the Papaya Administrative Committee are authorized and an assessment rate of $.0059 per pound of assessable papayas is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: December 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–23 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95–989–5IFR]

Raisins Produced From Grapes Grown in California; Reduction in the Production Cap for the 1996 Raisin Diversion Program for Natural (Sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on a reduction of the production cap for the 1996 Raisin Diversion Program (RDP) for Natural (sun-dried) Seedless raisins. The production cap, which limits the amount of raisin tonnage per acre for which an RDP participant can receive credit, is reduced from 2.75 tons per acre to 2.2 tons per acre for this program. This reduction is intended to bring the production cap for 1996 in line with 1995 production per acre, which was approximately 20 percent smaller than the 1994 crop yield per acre. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective January 3, 1996. Comments which are received by January 18, 1996 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under

marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, the production cap for the RDP is 2.75 tons per acre, but it may be reduced with the approval of the Secretary. This rule establishes a production cap of 2.2 tons per acre for the 1996 RDP. This rule is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The authority for the RDP and implementing rules and regulations are specified in §§ 989.56 and 989.156, respectively. The purpose of the RDP is to give producers the means to voluntarily reduce their raisin production. Each approved producer who has removed grapes in accordance with rules and regulations receives a diversion certificate from the Committee. Such certificates represent reserve tonnage raisins equal to the amount of raisins diverted. That is, the amount of grape acreage removed from production (for RDP purposes) multiplied by the producer's previous crop year yield in tons per acre, or multiplied by the production cap if the previous year's actual yield exceeds the cap.

These certificates may be submitted by producers only to handlers. The handler pays the producer for the free tonnage applicable to the diversion certificate minus the established harvest cost for the entire tonnage shown on the certificate. Factors reviewed by the Committee in determining allowable harvest costs are specified in § 989.156(a)(1).

Any handler holding diversion certificates may redeem such certificates with the Committee for reserve pool raisins. To redeem a certificate, the handler must present the certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the certificate.

The marketing order requires the Committee to meet on or before November 30 of each crop year to review production data, supply data, demand data, inventory, and other matters relating to the quantity of raisins available to or needed by the market. If the Committee decides that the current crop year's reserve pool has more than enough raisins to meet projected market needs, it can announce the amount of such excess eligible for diversion during the subsequent crop year. The administrative rules and regulations established under the order require that such announcement be made on or before November 30 of each year.

A production cap of 2.75 tons of raisins per acre is established under the order for any production unit of a producer approved for participation in an RDP. When the diversion tonnage is announced, the Committee may recommend, subject to the approval of the Secretary, that the production cap for that RDP be less than 2.75 tons per acre. The production cap limits the yield that a producer can claim and is designed to allow most high yield producers to participate in an RDP. When the cap was added to the marketing order in 1989, only 8 percent of raisin producers exceeded the 2.75 tons per acre yield. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in a diversion program. No producer is required to participate in an RDP.

A producer who wants to participate in an RDP must apply to the Committee. The producer must specify, among other things, the raisin production and the acreage covered by the application. The Committee verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in an RDP may be credited, and protects the program from overstated production yields.

For example, a producer whose actual yield was 2.5 tons per acre might claim that the yield was 3.5 tons per acre on the RDP application. The current production cap would allow that producer to receive a diversion certificate for 2.75 tons per acre, which is 0.25 tons above the actual yield but far less than the 1.0 ton which would have been improperly credited if the diversion certificate had been based on a yield of 3.5 tons per acre. The production cap reduces the amount of inflated tonnage which could be improperly credited and allows more producers to participate. When the production cap is more in line with the

actual yield per acre, the total quantity of raisins available under the RDP can be allocated to more applicants. A producer who actually produced 3.5 tons per acre might decide to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

The Committee met on November 27, 1995, and reviewed data relating to the quantity of reserve pool raisins and anticipated market needs. The Committee decided that the 1995–96 reserve pool had more raisins than necessary to meet projected market needs and announced that 20,000 tons of Natural (sun-dried) Seedless raisins would be eligible for diversion under the 1996 RDP.

The Committee members believe that the current production cap is too high because 1995 crop year yields per acre are down 20 percent compared to 1994. The Committee, therefore, unanimously recommended a reduction in the production cap of 20 percent, from 2.75 tons per acre to 2.2 tons per acre for the 1996 RDP, based on 1995 production. Reducing the production cap proportionately to the decrease in yield per acre is more reflective of actual production yields during the 1995 crop year.

A 15-day comment period was deemed appropriate for this rule because the submission deadlines for applications and corrected applications for the 1996 RDP are December 20, 1995, and January 12, 1996, respectively, and the Department would like to make its final decision available as quickly as possible.

The information collection requirement (i.e., the RDP application) referred to in this rule has been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and has been assigned OMB number 0581–0083.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The submission deadlines for producer applications and corrected applications for the 1996 RDP are December 20, 1995, and January 12, 1996, respectively, and producers need to know about the reduced production cap as soon as possible, to make a decision on whether or not to apply; (2) producers are aware of this action, which was recommended by the Committee at an open meeting; (3) the program is voluntary, and any producer who objects to the reduced production cap can choose to produce a raisin crop for delivery during 1996; and (4) this interim final rule provides a 15-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new paragraph (t) is added to § 989.156 of Subpart—Administrative Rules and Regulations (7 CFR Part 989.102–989.176) to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(t) Pursuant to § 989.56(a), the production cap for the 1996 Raisin Diversion Program for the Natural (sun dried) Seedless varietal type is 2.2 tons of raisins per acre.

Dated: December 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–26 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 997

[Docket No. FV95–997–2FIR]

Amendment of Provisions Regulating Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without modification, the provisions of an interim rule that amended, for 1995 and subsequent crop years, several certification and identification requirements established for peanuts handled by persons not signatory to Peanut Marketing Agreement No. 146 (Agreement). The interim final rule provided for a chemical analysis exemption for superior grade shelled peanuts and added addresses and updated contact numbers of chemical analysis laboratories. The changes are consistent with industry operating practices and bring the non-signatory handling requirements into conformity with requirements specified under the Agreement. Continuation of this rule should reduce the regulatory burden and handling costs on non-signatory peanut handlers.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–2020, facsimile (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the

Agreement and, thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. It is estimated that most of the non-signatory handlers are small entities. Most of the 47,000 peanut producers who might potentially do business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

In 1994, the reported U.S. production, mostly covered under the Agreement, was approximately 4.25 billion pounds of peanuts, a 25 percent increase from the short 1993 crop. The preliminary 1994 peanut crop value is $1.23 billion, up 19 percent from the 1993 crop value.

After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Act, Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965 (7 CFR part 998). The Agreement was signed by a majority of domestic peanut handlers (signatory handlers).

Public Law 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all handlers who have not signed the Agreement (non-signatory handlers) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49983). It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

The objective of the Agreement (7 CFR part 998) and the non-signatory handling regulations (7 CFR part 997) is to ensure that only wholesome peanuts enter edible market channels. Under both regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Both regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination.

Under the non-signatory provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997. All amendments have been made to ensure that the non-signatory handling requirements are the same as modifications made to the signatory handling requirements under the Agreement. Violation of non-signatory regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3) for the crop year during which the violation occurs.

Because aflatoxin appears most frequently in damaged, stressed, under-developed, and malformed peanut kernels, peanut lots with fewer poor quality kernels are less likely to be contaminated. Under section 998.200(a) of the Agreement, minimum quality requirements for shelled peanuts are found in the ''Other Edible Quality'' table of the Agreement. All shelled peanuts destined for edible consumption must meet these minimum requirements. Peanuts meeting this minimum grade must also be chemically tested for contamination.

The Agreement also has a higher level of quality requirements titled ''Indemnifiable Grades.'' Peanuts meeting the indemnifiable grades do not have to be chemically analyzed for aflatoxin.

The minimum quality requirements specified in the ''Other Edible Quality'' table of the Agreement are also specified in the non-signatory handler regulations in the table titled ''Minimum Grade Requirements—Peanuts for Human Consumption'' (hereinafter referred to as Table 1) in section 997.30(a).

To be consistent with the Agreement, the Department established in the interim final rule, a second table titled ''Superior Quality Exemption—Peanuts for Human Consumption'' (hereinafter referred to as Table 2) in the outgoing quality requirements in section 997.30(a). The quality requirements in Table 2 are the same as those established in the Indemnifiable Grades table of the Agreement. Non-signatory handler peanuts meeting the Superior Quality Exemption grades are not required to be chemically tested for aflatoxin. However, buyers often require chemical analysis as an assurance of minimum aflatoxin contamination.

The Superior Quality Exemption tolerances in these regulations are (in percentage of kernels): Unshelled and damaged kernels (1.25); combined unshelled, damaged kernels and kernels with minor defects (2.00); sound split and broken kernels (3.00 for most varieties); sound whole kernels that pass specified screens (3.00 for most varieties); combined sound split and broken kernels (4.00 for all varieties); foreign material (.10 for some varieties and .20 for other varieties), and moisture (9.00).

Amendments to Handling Requirements

The Committee meets in February or March each year and recommends to the Secretary such rules and regulations as may be necessary to keep the Agreement consistent with current industry practice. The Committee met on March 22 and 23, 1995, and unanimously recommended four relaxations in the Agreement handling requirements which the Department accepted. The changes were published in the July 14, 1995, issue of the Federal Register as an interim final rule (60 FR 36205). The interim final rule established the same relaxations, as appropriate, for the non-signatory handling regulations.

The first amendment relaxed Positive Lot Identification (PLI) and quality certification requirements specified in paragraph (g) of section 997.20 *Shelled peanuts* by allowing movement of failing quality shelled peanuts, which originated from Segregation 1 peanuts, from one handler to another handler without requiring re-inspection and PLI certification by the receiving handler. Previously, paragraph (g) provided that handlers could acquire from other handlers for remilling, Segregation 1 shelled peanuts that failed to meet the requirements for human consumption. The peanuts had to be accompanied by a valid inspection certificate and be positive lot identified. Further, the peanuts had to be held and milled separate and apart from other receipts or acquisitions of the receiving handler and the transaction had to be reported to the Division by both handlers.

Under the relaxed handling procedure, receiving handlers are not required to hold and remill such peanuts separate from other receipts and acquisitions of the handlers and the received peanuts do not have to be reinspected. Any peanuts so transferred and handled must still meet all the applicable edible quality requirements before being disposed of for human consumption.

Therefore, paragraph (g) of section 997.20 was revised, in the interim final rule, by removing the second sentence requiring inspection certification and positive lot identification and changing the last sentence to remove reference to received peanuts being held and milled separate and apart from other peanuts.

The second amendment relaxed ownership requirements of paragraph (f) of section 997.30 *Outgoing regulations* by allowing handlers to transfer peanuts to another handler or to domestic commercial storage facilities. Originally, paragraph (f) applied to the transfer of peanuts from one plant to another of a handler's plants or to commercial storage without having the peanuts PLI and certified as meeting quality requirements—provided that ownership was retained by the handler and that the transfer was only to points within the same production area.

The amendment extended the provisions of paragraph (f) to allow the transfer of peanuts from one handler's facility to another handler's facility for further handling. The relaxation allows handlers to make the most efficient use of other handling facilities without having to pay additional costs entailed in obtaining PLI and quality certification of the peanuts. Any peanuts so transferred are still subject to all applicable edible quality requirements before being disposed of for human consumption. Thus, the revisions to paragraph (f) of section 997.30 to include the transfer of peanuts between facilities of different handlers without quality certification and PLI at the time of transfer is continued in effect.

Similarly, the third amendment revised some PLI and certification requirements of paragraphs (a)(1), (a)(2) and (a)(3) of section 997.40 *Reconditioning and disposition of peanuts failing quality requirements.* Paragraph (a)(1) previously provided that a handler of failing quality, Segregation 1 shelled peanuts may have remilled, moved under PLI to a custom remiller, sold to another handler, or blanched such peanuts. Paragraph (a)(2) provided that such peanuts moved to blanching, or sold to another handler for blanching, had to be moved under PLI. Paragraph (a)(3) required peanut lots in such transactions to be accompanied by a valid grade certificate and moved under PLI. Peanuts so handled had to be kept separate and apart from other peanuts at the remilling, blanching or receiving handler facility.

Under the relaxed handling procedure, the peanuts do not have to be moved under PLI to the remiller, blancher, or receiving handler. Further, to be consistent with the changes in the Agreement regulations, peanuts so moved no longer have to be kept separate and apart from other peanuts at the remilling, blanching or receiving handler facility. Thus, the revisions to paragraphs (a)(1), (a)(2), and (a)(3) of section 997.40 by removing references to PLI and movement accompanied by valid certification are continued in effect. Additionally, the provisions added in the appropriate provisions to provide that the transferred peanuts do not have to be kept separate and apart at the receiving remilling, blanching, or handling facility remain in effect.

The Committee members, in proposing the changes in the Agreement provisions, believed that the more restrictive level of regulatory control for each peanut lot is no longer needed. The changes in this rule are based on the fact that current shelling, processing, remilling and blanching technologies are generally more efficient than in the past. The rule makes it more economical for handlers to use blanchers' and remillers' facilities which are generally operated more efficiently. These facilities are now located throughout the different production areas which also encourages their use.

The rule provides handlers more reconditioning flexibility by eliminating some certification requirements and PLI of peanuts and by reducing costs incurred during movement to different locations and facilities. The rule should improve handlers' competitive positions. Relaxing the regulations has allowed freer movement of peanuts and more efficient use of facilities. The relaxation of PLI and certification requirements has reduced the number of inspections and should result in lower costs to the entire industry. Fewer inspections are not expected to compromise the industry's quality control and lot identification objectives.

The interim final rule also added and updated addresses and telephone and facsimile numbers, where applicable, of approved aflatoxin testing laboratories and identified the contact point of the USDA Science Division headquarter's office. The laboratories perform chemical analyses required by the non-signatory handling regulations. This information is provided in paragraphs (c)(5)(i) and (ii) of section 997.30 *Outgoing regulation.* Nine of the laboratories are approved by the USDA/AMS Science Division and eight are approved by the Committee. Non-signatory handlers may send peanut samples to any laboratory on the list, per instructions specified in paragraph (c) of the outgoing regulation.

The interim final rule on these issues was published in the Federal Register on September 28, 1995 (60 FR 50083). That rule invited interested persons to submit written comments through October 30, 1995. No Comments were received and the Department is adopting as a final rule, without change, the provisions of the interim final rule.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Accordingly, the interim final rule amending 7 CFR Part 997 which was published at 60 FR 50083 on September 28, 1995, is adopted as a final rule without change.

Dated: December 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–24 Filed 1–2–96; 8:45am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1773

RIN 0572–AA93

Policy on Audits of RUS Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its regulations on audits of RUS borrowers. This rule incorporates changes to the audit regulations necessitated by the 1994 revision of Government Auditing Standards (GAGAS), issued by the Comptroller General of the United States, United States General Accounting Office (GAO), effective for financial audits of periods ending on or after January 1, 1995 and by Statement on Auditing Standards (SAS) No. 74,

Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA), effective for fiscal periods ending after December 31, 1994.

This rule also clarifies the peer review requirements for certified public accountants (CPA) performing audits of RUS borrowers.

DATES: This rule is effective January 3, 1996. This rule applies to audits of periods ending on December 31, 1995, and thereafter.

Written comments must be received by RUS or carry a postmark or equivalent no later than March 4, 1996.

ADDRESSES: Submit written comments to Ms. Roberta D. Purcell, Chief, Technical Accounting and Auditing Staff, Borrower Accounting Division, Rural Utilities Service, Ag Box 1523, room 2221–S, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–5227. RUS requires a signed original and three copies of all comments (7 CFR part 1700). All comments will be made available for inspection at room 2234 South Building during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta D. Purcell, Chief, Technical Accounting and Auditing Staff, Borrower Accounting Division, Rural Utilities Service, Ag Box 1523, room 2221–S, U.S. Department Of Agriculture, Washington, DC 20250, telephone number (202) 720–5227.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act Certification

The Administrator, RUS, has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule.

Information Collection and Record Keeping Requirements

The reporting and recordkeeping requirements contained in the interim rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0095.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Hepppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250–1522.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

National Environmental Policy Act Certification

The Administrator, RUS, has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this interim rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850—Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402, (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceeding before parties may file suit challenging the provisions of this rule.

Background

Part 1773 implements the standard RUS security instrument provision requiring RUS borrowers to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS, audited and certified by an independent CPA, satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS. A report of the audit was defined in § 1773.1, General, to include the auditor's report, report on compliance, report on internal controls and management letter.

On January 6, 1994, RUS published a final rule amending part 1773, at 59 FR 657, that revised and clarified a provision of part 1773 that requires a certified public accountant (CPA) to state whether an electric borrower has complied with certain provisions of its loan and security instruments. The January 6, 1994 final rule also incorporated the illustrative management letter issued by the AICPA in a Technical Practice Aid dated November 11, 1992.

This rule amends part 1773 to comply with the 1994 revision of GAGAS. The 1994 revision of GAGAS adds three additional field work standards. It also provides guidance on reporting, required communications, and external quality control review.

The first additional standard requires CPAs to follow up on known, material findings and recommendations from previous audits. This standard is accomplished through compliance with § 1773.32(a) and § 1773.33 of the current regulation.

The second additional standard requires CPAs to design their audits to detect material noncompliance with contracts or grant agreements. Section 1773.9, Disclosure of Irregularities and Illegal Acts, requires CPAs to design the audit to include audit steps and procedures to provide reasonable assurance of detecting errors, irregularities, and illegal acts that could have a material effect on the financial statement amounts and to extend audit procedures if there is an indication that an irregularity may have occurred. This rule revises the language of this section to include the supplemental standard to design the audit to detect material noncompliance with contracts or grant agreements as required by the 1994 revision of GAGAS.

The third additional standard requires CPAs to provide, in the working papers, sufficient information to allow an experienced auditor to locate the evidence supporting the CPA's significant conclusions and judgments. Section 1773.6, Audit Agreement, requires the CPA and borrower to enter into an audit agreement. Among the declarations that must be included in the audit agreement is a statement that the CPA will document the audit work

performed in accordance with the professional standards of the AICPA and part 1773. This rule revises this section to incorporate the additional working paper requirements set forth in the 1994 revision of GAGAS.

The 1994 revision of GAGAS requires the CPA to communicate the auditor's responsibilities for consideration of internal controls and compliance with laws and regulations and to contrast those responsibilities with the additional procedures that could be performed and the additional assurances or opinions on the internal control structure or on compliance with laws and regulations that would result. This communication must be with the board of directors. This rule revises § 1773.6 to include this required communication.

Section 1773.6 also requires the audit agreement to include a statement that ''The borrower and CPA acknowledge that RUS regulations provide that if the borrower fails to have an audit performed and documented in compliance with GAGAS and this part, the borrower is in violation of its security instrument with RUS''. In response to our September 23, 1993, proposed rule, one CPA firm stated that this language exceeds the applicable mortgage covenant and the following language should be substituted ''The borrower and CPA acknowledge that RUS will consider the borrower to be in violation of its security instrument with RUS if the borrower fails to have an audit performed and documented in compliance with GAGAS and 7 CFR part 1773. The proposed rule published on September 23, 1993, did not include revisions to § 1773.6; therefore, we have incorporated the aforementioned revision in this proceeding.

Section 1773.5, Qualifications of CPA, requires a CPA to submit to a peer review of its accounting and audit practice every three years or at such additional times as designated by the peer review executive committee. Due to the increased number of peer reviews being performed, many reviewers have experienced problems scheduling peer reviews within the required time period. As a result, the AICPA extended the time period to 42 months. RUS is, therefore, amending its requirement to allow CPAs an additional six months to comply.

Similarly, the AICPA Board of Directors and the AICPA Council approved the combination of the peer review program conducted by the Private Companies Practice Section of the AICPA and the AICPA quality review program effective for reviews performed April 3, 1995, and thereafter. The AICPA Peer Review Board will conduct this program in cooperation with the state CPA societies. Section 1773.5 has been revised to reflect the changes necessitated by this merger.

The 1994 revision of GAGAS also provides guidance on external quality control (peer) reviews. The CPA is required to provide a copy of its most recent peer review report to those contracting for the audit. Reciprocal peer reviews are prohibited; for example, an audit organization is not permitted to review the organization that conducted its most recent review. This interim rule revises § 1773.5 to incorporate the aforementioned change.

RUS's peer review requirement as currently set forth in § 1773.5 does not allow individual CPAs that previously audited RUS borrowers as part of a CPA firm to enter into private practice and audit RUS borrowers without first obtaining a peer review. RUS is allowing the Administrator of RUS to waive the peer review requirement for a period of 18 months if the CPA meets certain proposed criteria set forth in § 1773.5(c)(7). The criteria established provides RUS with assurance that the CPA has previously participated in establishing the quality control standards for a CPA firm, the CPA has had responsibility for the audit of an RUS borrower, and that a CPA firm is not reorganizing for the sole purpose of evading the peer review requirement or extending the time period for the performance of a peer review.

The 1994 revision of GAGAS requires the auditor's report to refer to separate reports on compliance and on internal controls. Section 1773.31, Auditor's Report, requires the CPA to prepare a written report covering all statements issued. This rule revises the language of this section to incorporate the aforementioned change.

The 1988 revision of GAGAS required auditors to express positive-negative assurance on compliance with laws and regulations in the report on compliance and to identify the categories of controls considered significant in the report on the internal control structure. These requirements were eliminated in the 1994 revision of GAGAS. Section 1773.32, Report on Compliance, requires the CPA to prepare a written report on compliance with applicable laws, regulations, and contracts as required by GAGAS. This rule removes the positive-negative assurance requirement from the report on compliance. Similarly, § 1773.33, Report on Internal Controls, requires the CPA to prepare a written report on the borrower's internal control structure and the assessment of control risk made as part of the financial statement audit as required by GAGAS. This rule deletes the requirement to identify the categories of controls considered significant in the CPA's report on the internal control structure.

Section 1773.34, Management Letter, specifies the minimum requirements for the CPA's management letter. Among these is the requirement for the CPA to state whether the information submitted to RUS in its most recent December 31 RUS Form 7, Financial and Statistical Report; Form 12, Operating Report—Financial; or Form 479, Financial and Statistical Report for Telephone Borrowers, is in agreement with the borrower's records. This rule would clarify that the CPA's statement must indicate whether the most recent December 31 RUS Form 7, 12, or 479 agrees with the borrower's ''audited'' records.

The CPA is also required by § 1773.34 to comment when depreciation rates for electric borrowers are not in compliance with RUS requirements. This rule clarifies the requirement that the CPA comment when the depreciation rates used by the borrower for each primary plant account are not within the range established for that particular account by RUS Bulletin 183–1, Depreciation Rates and Procedures, or by the requirements of the state regulatory body having jurisdiction over the borrower's depreciation rates.

Also included in § 1773.34 is a requirement for the CPA to comment on the adequacy of the borrower's controls over materials and supplies. As part of the comment, RUS requires the presentation of a ''Detailed Schedule of Inventory Differences.'' RUS is eliminating this schedule as it does not provide information that is beneficial to the users of the financial statements. The above changes are also reflected in the revision of Appendix C to Part 1773—Illustrative Independent Auditor's Management Letter.

In February 1995, the Auditing Standards Board issued SAS No. 74, Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance, effective for fiscal periods ending after December 31, 1994. SAS No. 74 supersedes SAS No. 68, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance. In conjunction with the issuance of SAS No. 74 and the 1994 revision of GAGAS, the AICPA also revised its illustrative reports in the Audit and Accounting Guide, Audits of State and Local Governmental Units, thereby necessitating the changes in the

sample reports contained in Appendix A to Part 1773—Sample Auditor's Report for an Electric Cooperative and Appendix B to Part 1773—Sample Auditor's Report for a Class A or B Commercial Telephone Company.

RUS has determined that, for a number of reasons, good cause exists to make this rule effective immediately on an interim basis. Notice and comment prior to the effective date is impractical, unnecessary and contrary to the public interest. RUS loan documents and implementing regulations generally require that each borrower provide RUS with an annual audit report, prepared by an independent CPA within 120 days of the ''as of'' audit date. To meet this deadline for audits of financial statements prepared as of December 31, 1995, audits must be undertaken immediately. In conducting the audit and preparing the report, CPAs are required to comply with the provisions of GAGAS and with the provisions of this part 1773. As a result of changes in GAGAS, there are currently inconsistencies between GAGAS and this part 1773; therefore, CPAs must be immediately advised of the applicable audit requirements and any inconsistencies between GAGAS and part 1773 must be resolved. If the inconsistencies are not resolved, borrowers could be placed in technical default under their loan documents with both the government and private co-lenders. Any failure to comply with loan documents can of course affect borrowers access to and cost of capital. Moreover, borrowers could be forced to incur additional audit expense absent an immediate reconciliation of RUS audit requirements. Such consequences are not in the interests of the RUS program, the borrowers or the people they serve. In addition, many of the changes implemented by this rule were previously subjected to notice and comment prior to being issued by GAO. Consequently, further notice and comment is unnecessary.

List of Subjects in 7 CFR Part 1773

Accounting, Electric power, Loan programs—communications, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, RUS hereby amends 7 CFR chapter XVII as follows:

PART 1773—POLICY ON AUDITS OF RUS BORROWERS

1. The authority citation for Part 1773 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 7 U.S.C. 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1773.1 is amended by revising paragraph (c) to read as follows:

§ 1773.1 General.

* * * * *

(c) This part complies with the 1994 revision of Government Auditing Standards, issued by the Comptroller General of the United States, United States General Accounting Office.

* * * * *

3. Section 1773.5 is amended by revising paragraph (c) to read as follows:

§ 1773.5 Qualifications of CPA.

* * * * *

(c) *Peer review requirement.* The CPA must belong to and participate in a peer review program, and must have undergone a satisfactory peer review of the accounting and audit practice conducted by an approved peer review program under paragraph (c)(4) of this section, unless a waiver is granted under paragraph (c)(7) of this section. The reviewing organization must not be affiliated with or have had its most recent peer review conducted by the organization currently being reviewed (reciprocal reviews). After the initial peer review has been performed, the CPA must undergo a peer review of the accounting and audit practice within 42 months of the previous ''as of'' peer review date or at such additional times as designated by the peer review executive committee.

(1) A CPA that receives an unqualified peer review report will be satisfactory to RUS provided that the CPA meets the other criteria set forth in this section.

(2) If a CPA receives a qualified or adverse peer review report, the CPA must undergo a second peer review within 18 months of the date of the qualified or adverse report. A CPA that receives an unqualified second peer review report will be satisfactory to RUS provided that the CPA meets the other criteria set forth in this section.

(3) A CPA that receives a second qualified or adverse peer review report will not be satisfactory to RUS.

(4) Approved peer review programs. The following peer review programs are approved by RUS:

(i) The peer review programs conducted by the AICPA;

(ii) The peer review program conducted by the regulated audit program group of the National Conference of CPA Practitioners; and

(iii) An independent peer review program that, in RUS's determination, requires its members to:

(A) Ensure that the CPA can legally engage in the practice of certified public accounting;

(B) Adhere to the quality control standards established by the AICPA;

(C) Submit to peer reviews of the CPA's accounting and audit practice every 42 months or at such additional times as designated by its own executive committee; and

(D) Ensure that all professionals in the firm, including CPAs and nonCPAs, take part in the qualifying continuing professional education requirements of GAGAS, as set forth in paragraphs (c)(4)(iii)(D)(*1*) and (c)(4)(iii)(D)(*2*). A qualified continuing professional education course is one which meets the standards of the AICPA.

(*1*) An auditor responsible for planning, directing, conducting, or reporting on government audits must complete, every two years, at least eighty hours of continuing education and training which contributes to the auditor's professional proficiency. At least twenty hours must be completed in any one year of the two-year period; and

(*2*) An individual responsible for planning, directing, and conducting substantial portions of the field work, or reporting on the government audit must complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the government environment and to government auditing. If the audited entity operates in a specific or unique environment, auditors must receive training that is related to that environment.

(5) *Notification.* The CPA must notify the Director, BAD, in writing, of participation in a peer review program. RUS will notify the CPA within 60 days of receipt of this notice if the selected peer review program is acceptable.

(6) *Submission of reports.* The CPA must submit to the Director, BAD, a copy of any peer review report and accompanying letter of comment, if any, within 60 days of the date such report and letter of comment are released by the peer review group.

(i) If the peer review report indicates that a follow-up review will be made, the CPA must submit subsequent reports to the Director, BAD, within 60 days of the date such reports are released by the peer review group.

(ii) A peer review report must be submitted to the Director, BAD, at least once every 42 months, or more frequently, if required by the peer review program.

(iii) A copy of the peer review report, accompanying letter of comment, and the partners' inspections must be made available to OGC, upon request.

(7) Waiver of the peer review requirement.

(i) A CPA may request that the Administrator, RUS, waive the peer review requirement. To be eligible for a waiver, the following criteria must be met:

(A) The firm has been in existence for less than 1 year from the date of the request and has not been previously organized under a different name;

(B) One of the partners organizing the firm has previously, within 18 months preceding the request, worked for a firm that has been peer reviewed and the partner was partner-in-charge of audits of RUS borrowers in the previous firm;

(C) The firm has enrolled in an approved peer review program; and

(D) The firm agrees to have the peer review conducted within 18 months of the date of the RUS waiver.

(ii) Waiver requests must address each of the criteria in paragraph (c)(7)(i) of this section and should be submitted to the Director, Borrower Accounting Division.

* * * * *

4. Section 1773.6 is amended by revising paragraph (a) to read as follows:

§ 1773.6 Audit agreement.

(a) An audit agreement must be entered into between the CPA and the borrower. The audit agreement must set forth the auditor's responsibilities in a financial statement audit, including the responsibilities for testing and reporting on internal controls and compliance with laws and regulations and the nature of any additional testing of internal controls and compliance required by laws and regulations. These responsibilities should be contrasted with the additional procedures that could be performed that would result in additional assurances or opinions on the internal control structure and compliance with laws and regulations. The audit agreement must also include the following:

(1) The borrower and the CPA acknowledge that the audit is being performed and the auditor's report, report on compliance, report on internal controls, and management letter is being issued in order to enable the borrower to comply with the provisions of RUS's security instrument;

(2) The borrower and CPA acknowledge that RUS will consider the borrower to be in violation of its security instrument with RUS if the borrower fails to have an audit performed and documented in compliance with GAGAS and this part;

(3) The CPA represents that he/she meets the requirements under this part to be satisfactory to RUS;

(4) The CPA will perform the audit and will prepare the auditor's report, report on compliance, report on internal controls, and management letter in accordance with the requirements of this part;

(5) The CPA will document the audit work performed in accordance with GAGAS, the professional standards of the AICPA, and the requirements of this part;

(6) The CPA will make all audit-related documents, including auditor's reports, workpapers, and management letters available to RUS or its representatives (OGC and GAO), upon request, and will permit the photocopying of all audit-related documents; and

(7) The CPA will follow the requirements of reporting irregularities and illegal acts as outlined in § 1773.9.

* * * * *

5. Section 1773.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1773.9 Disclosure of irregularities and illegal acts.

(a) In accordance with GAGAS, the CPA must design audit steps and procedures to provide reasonable assurance of detecting errors, irregularities, illegal acts, and noncompliance with the provisions of contracts or grant agreements that could have a direct and material effect on financial statement amounts.

(b) If there is an indication that an irregularity may have occurred or evidence concerning the existence of a possible instance of noncompliance with the provisions of contracts or grant agreements that could have a material direct or indirect effect on the financial statements, the CPA must extend audit steps and procedures to obtain sufficient, competent evidential matter to determine whether, in fact, an irregularity or an instance of noncompliance has occurred and the effect on the borrower's financial statements.

* * * * *

6. Section 1773.31 is revised to read as follows:

§ 1773.31 Auditor's report.

The CPA must prepare a written report on comparative balance sheets, statements of revenue and patronage capital (or income and retained earnings, depending upon the structure of the borrower) and statements of cash flows. This report must be signed by the CPA, cover all statements presented, and refer to the separate reports on internal controls and on compliance with laws and regulations issued in conjunction with the auditor's report.

7. Section 1773.32 is amended by revising paragraph (a) to read as follows:

§ 1773.32 Report on compliance.

(a) As required by GAGAS, the CPA must prepare a written report on the tests performed for compliance with applicable laws, regulations, contracts, and grants. This report must be signed by the CPA and must contain the status of known but uncorrected significant or material findings and recommendations from prior audits that affect the current audit objective.

* * * * *

8. Section 1773.33 is revised to read as follows:

§ 1773.33 Report on internal controls.

As required by GAGAS, the CPA must prepare a written report on the borrower's internal control structure and the assessment of control risk made as part of the financial statement audit. This report must be signed by the CPA and must include, as a minimum:

(a) The scope of the CPA's work to obtain an understanding of the borrower's internal control structure and in assessing the control risk;

(b) A description of the reportable conditions noted which include material weaknesses identified as a result of the CPA's work in understanding and assessing the control risk; and

(c) The status of known but uncorrected, significant or material findings and recommendations from prior audits that affect the current audit objective.

9. Section 1773.34 is amended by removing paragraphs (d)(1), (d)(2), and (d)(3) and revising paragraphs (e)(1)(iii), (e)(2)(iii), and (g) to read as follows:

§ 1773.34 Management letter.

* * * * *

(e) * * *

(1) * * *

(iii) The requirement for a borrower to prepare and furnish mortgagees annual financial and statistical reports on the borrower's financial condition and operations. The CPA must state whether the information represented by the borrower as having been submitted to RUS in its most recent December 31 RUS Form 7 or Form 12 is in agreement with the borrower's audited records, and must comment on any exceptions noted. If the borrower represents that an amended report has been filed as of December 31, the comments must relate to the amended report.

(2) * * *

(iii) The requirement for a borrower to prepare and furnish mortgagees annual

financial and statistical reports on the borrower's financial condition and operations. The CPA must state whether the information represented by the borrower as having been submitted to RUS in its most recent December 31 RUS Form 479 is in agreement with the borrower's audited records, and must comment on any exceptions noted. If the borrower represents that an amended report has been filed as of December 31, the comments must relate to the amended report;

* * * * *

(g) Depreciation rates. For electric borrowers, comment when the depreciation rates used in computing monthly accruals are not in compliance with RUS requirements (See RUS Bulletin 183–1, Depreciation Rates and Procedures), which require the use of depreciation rates that are within the ranges established by RUS for each primary plant account, or with the requirements of the State regulatory body having jurisdiction over the borrower's depreciation rates; and

* * * * *

10. In Appendix A to Part 1773 Exhibits 1 through 6 are revised to read as follows:

Appendix A to Part 1773—Sample Auditor's Report for an Electric Cooperative

* * * * *

Exhibit 1—Sample Auditor's Report

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

Independent Auditor's Report

We have audited the accompanying balance sheets of Center County Electric Cooperative as of December 31, 19X9 and 19X8, and the related statements of revenue and patronage capital, and cash flows for the years then ended. These financial statements are the responsibility of Center County Electric Cooperative's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Center County Electric Cooperative as of December 31, 19X9 and 19X8, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

In accordance with Government Auditing Standards, we have also issued a report dated March 2, 19X0, on our consideration of Center County Electric Cooperative's internal control structure and a report dated March 2, 19X0, on its compliance with laws and regulations.

Certified Public Accountants

March 2, 19X0

Exhibit 2—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Concluded It Was Not Necessary to Perform Tests of Compliance With Laws and Regulations

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

We have audited the financial statements of Center County Electric Cooperative as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and the Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center County Electric Cooperative is the responsibility of Center County Electric Cooperative's management. As part of our audit, we assessed the risk that noncompliance with certain provisions of laws, regulations, contracts, and grants could cause the financial statements to be materially misstated. We concluded that the risk of such material misstatement was sufficiently low that it was not necessary to perform tests of Center County Electric Cooperative's compliance with such provisions of laws, regulations, contracts, and grants.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 3—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Performed Compliance Testing and Found No Reportable Instances of Noncompliance

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

We have audited the financial statements of Center County Electric Cooperative as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center County Electric Cooperative is the responsibility of Center County Electric Cooperative's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of Center County Electric Cooperative's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under Government Auditing Standards.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 4—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Performed Compliance Testing and Found Reportable Instances of Noncompliance

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

We have audited the financial statements of Center County Electric Cooperative as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center County Electric Cooperative is the responsibility of Center County Electric Cooperative's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we preformed tests of Center County Electric Cooperative's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial

statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed instances of noncompliance that are required to be reported herein under Government Auditing Standards for which the ultimate resolution cannot presently be determined. Accordingly, no provision for any liability that may result has been recognized in Center County Electric Cooperative's 19X9 and 19X8 financial statements.

[Include paragraphs describing the instances of noncompliance noted.]

We considered these instances of noncompliance in forming our opinion on whether Center County Electric Cooperative's 19X9 and 19X8 financial statements are presented fairly, in all material respects, in conformity with generally accepted accounting principles, and this report does not effect our report dated March 2, 19X0, on those financial statements.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 5—Sample Report on Internal Controls When Reportable Conditions Were Found

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

We have audited the financial statements of Center County Electric Cooperative as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of Center County Electric Cooperative is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that the assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the financial statements of Center County Electric Cooperative for the years ended December 31, 19X9 and 19X8, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

We noted certain matters involving the internal control structure and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgement, could adversely affect the entity's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

[Include paragraphs to describe the reportable conditions noted.]

A material weakness is a reportable condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above. However, we believe none of the reportable conditions described above is a material weakness.

We also noted other matters involving the internal control structure and its operation that we have reported to the management of Center County Electric Cooperative in a separate letter dated March 2, 19X0.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record, and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 6—Sample Report on Internal Controls When No Reportable Conditions Were Found

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center County Electric Cooperative:

We have audited the financial statements of Center County Electric Cooperative, as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of Center County Electric Cooperative is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the financial statements of Center County Electric Cooperative for the years ended December 31, 19X9 and 19X8, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur

and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control structure and its operations that we consider to be material weaknesses as defined above.

However, we noted other matters involving the internal control structure and its operation that we have reported to the management of Center County Electric Cooperative in a separate letter dated March 2, 19X0.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record, and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

* * * * *

11. In Appendix B to Part 1773, Exhibits 1 through 6 are revised to read as follows:

Appendix B to Part 1773—Sample Auditor's Report for a Class A or B Commercial Telephone Company

* * * * *

Exhibit 1—Sample Auditor's Report

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company:

Independent Auditor's Report

We have audited the accompanying balance sheets of Center Telephone Company as of December 31, 19X9 and 19X8, and the related statements of revenue and patronage capital, and cash flows for the years then ended. These financial statements are the responsibility of Center Telephone Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Center Telephone Company as of December 31, 19X9 and 19X8, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

In accordance with Government Auditing Standards, we have also issued a report dated March 2, 19X0, on our consideration of Center Telephone Company's internal control structure and a report dated March 2, 19X0, on its compliance with laws and regulations.

Certified Public Accountants

March 2, 19X0

Exhibit 2—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Concluded It Was Not Necessary to Perform Tests of Compliance With Laws and Regulations

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company

We have audited the financial statements of Center Telephone Company as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and the Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center Telephone Company is the responsibility of Center Telephone Company's management. As part of our audit, we assessed the risk that noncompliance with certain provisions of laws, regulations, contracts, and grants could cause the financial statements to be materially misstated. We concluded that the risk of such material misstatement was sufficiently low that it was not necessary to perform tests of Center Telephone Company's compliance with such provisions of laws, regulations, contracts, and grants.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 3—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Performed Compliance Testing and Found No Reportable Instances of Noncompliance

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company:

We have audited the financial statements of Center Telephone Company as of and for the years ended December 31, 19X9 and 19X8, and have issued our report dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center Telephone Company is the responsibility of Center Telephone Company's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of Center Telephone Company's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under Government Auditing Standards.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 4—Sample Report on Compliance When, Based on Assessments of Materiality and Audit Risk, the CPA Performed Compliance Testing and Found Reportable Instances of Noncompliance

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company:

We have audited the financial statements of Center Telephone Company as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Center Telephone Company is the responsibility of Center Telephone Company's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we preformed tests of Center Telephone Company's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed instances of noncompliance that are required to be reported herein under Government Auditing Standards for which the ultimate resolution cannot presently be determined. Accordingly, no provision for any liability that may result has been recognized in Center Telephone Company's 19X9 and 19X8 financial statements.

[Include paragraphs describing the instances of noncompliance noted.]

We considered these instances of noncompliance in forming our opinion on whether Center Telephone Company's 19X9

and 19X8 financial statements are presented fairly, in all material respects, in conformity with generally accepted accounting principles, and this report does not effect our report dated March 2, 19X0, on those financial statements.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 5—Sample Report on Internal Controls When Reportable Conditions Were Found

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company:

We have audited the financial statements of Center Telephone Company as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of Center Telephone Company is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that the assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the financial statements of Center Telephone Company for the years ended December 31, 19X9 and 19X8, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

We noted certain matters involving the internal control structure and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgement, could adversely affect the entity's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

[Include paragraphs to describe the reportable conditions noted.]

A material weakness is a reportable condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above. However, we believe none of the reportable conditions described above is a material weakness.

We also noted other matters involving the internal control structure and its operation that we have reported to the management of Center Telephone Company in a separate letter dated March 2, 19X0.

This report is intended for the information of the audit committee, management, and Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record, and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

Exhibit 6—Sample Report on Internal Controls When No Reportable Conditions Were Found

Certified Public Accountants, 1600 Main Street, City, State 24105, The Board of Directors, Center Telephone Company:

We have audited the financial statements of Center Telephone Company, as of and for the years ended December 31, 19X9 and 19X8, and have issued our report thereon dated March 2, 19X0.

We conducted our audit in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of Center Telephone Company is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the financial statements of Center Telephone Company for the years ended December 31, 19X9 and 19X8, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control structure and its operations that we consider to be material weaknesses as defined above.

However, we noted other matters involving the internal control structure and its operation that we have reported to the management of Center Telephone Company in a separate letter dated March 2, 19X0.

This report is intended for the information of the audit committee, management, the Rural Utilities Service, and supplemental lenders. However, this report is a matter of public record, and its distribution is not limited.

Certified Public Accountants

March 2, 19X0

* * * * *

12. Appendix C to Part 1773 is revised to read as follows:

Appendix C to Part 1773—Illustrative Independent Auditor's Management Letter

RUS requires that CPAs auditing RUS borrowers provide a management letter in accordance with § 1773.34. This letter must be signed by the CPA, bear the same date as the auditor's report, and be addressed to the borrower's board of directors.

Illustrative Independent Auditor's Management Letter

March 15, 19X6

Board of Directors, [Name of Borrower], [City, State].

We have audited the financial statements of [Name of Borrower] for the year ended December 31, 19X5, and have issued our report thereon dated March 15, 19X6. We conducted our audit in accordance with generally accepted auditing standards, Government Auditing Standards issued by the Comptroller General of the United States, and 7 CFR part 1773, Policy on Audits of Rural Utilities Service (RUS) Borrowers. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

In planning and performing our audit of the financial statements of [Name of Borrower] for the year ended December 31, 19X5, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on the internal control structure.

A description of the responsibility of management for establishing and maintaining the internal control structure and the objectives of and inherent limitations in such a structure is set forth in our independent auditors' report on the internal control structure dated March 15, 19X6, and should be read in conjunction with this report.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants.

A material weakness is a condition in which the design or operation of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be a material weakness as defined above. [If a material weakness was noted, refer the reader to the independent auditors' report on internal control structure.]

7 CFR 1773.34 requires comments on specific aspects of the internal control structure, compliance with specific RUS loan and security instrument provisions, and other additional matters. We have grouped our comments accordingly. In addition to obtaining reasonable assurance about whether the financial statements are free from material misstatements, at your request, we performed tests of specific aspects of the internal control structure, of compliance with specific RUS loan and security instrument provisions, and of additional matters. The specific aspects of the internal control structure, compliance with specific RUS loan and security instrument provisions, and additional matters tested include, among other things, the accounting procedures and records, materials control, compliance with specific RUS loan and security instrument provisions set forth in 7 CFR 1773.34 (e)(1), [for telephone borrowers, 7 CFR 1773.34 (e)(2)], related party transactions, and depreciation rates. [For electric borrowers:] The additional matters tested also include a schedule of deferred debits and credits, upon which we express an opinion. In addition, our audit of the financial statements also included the procedures specified in 7 CFR 1773.38–.45. Our objective was not to provide an opinion on these specific aspects of the internal control structure, compliance with specific RUS loan and security instrument provisions, or additional matters, and accordingly, we express no opinion thereon.

No reports (other than our independent auditors' report, our independent auditors' compliance report, and our independent auditors' report on the internal control structure, all dated March 15, 19X6) or summary of recommendations related to our audit have been furnished to management.

Our comments on specific aspects of the internal control structure, compliance with specific RUS loan and security instrument provisions, and other additional matters as required by 7 CFR 1773.34 are presented below.

Comments on Certain Specific Aspects of the Internal Control Structure

We noted no matters regarding [Name of Borrower]'s internal control structure and its operation that we consider to be a material weakness as previously defined with respect to:

—The accounting procedures and records [list other comments];

—The process for accumulating and recording labor, material, and overhead costs, and the distribution of these costs to construction, retirement, and maintenance or other expense accounts [list other comments]; and

—The materials control [list other comments].

Comments on Compliance With Specific RUS Loan and Security Instrument Provisions

Management's responsibility for compliance with laws, regulations, contracts, and grants is set forth in our independent auditors' report on compliance dated March 15, 19X6, and should be read in conjunction with this report. At your request, we have performed the procedures enumerated below with respect to compliance with certain provisions of laws, regulations, and contracts. The procedures we performed are summarized as follows:

—Procedure performed with respect to the requirement to maintain all funds in institutions whose accounts are insured by an Agency of the Federal government:

1. Obtained information from financial institutions with which [Name of Borrower] maintains funds that indicated that the institutions are insured by an Agency of the Federal government.

—Procedures performed with respect to the requirement for a borrower to obtain written approval of the mortgagee to enter into any contract for the operation or maintenance of property, or for the use of mortgaged property by others [see 1773.34 (e)(2)(i) for additional telephone borrower requirements in accordance with 7 CFR 1773.34 (e)] for the year ended December 31, 19X5 of [Name of Borrower]:

1. Obtained and read a borrower prepared schedule of new written contracts entered into during the year for the operation or maintenance of its property, or for the use of its property by others as defined in § 1773.34 (e)(1)(ii) [§ 1773.34 (e)(2)(i) for telephone borrowers]

2. Reviewed Board of Director minutes to ascertain whether board-approved written contracts are included in the borrower-prepared schedule.

3. Noted the existence of written RUS [and other mortgagee] approval of each contract listed by the borrower.

—Procedure performed with respect to the requirement to submit RUS Form 7 or Form 12 [Form 479 for telephone borrowers] to the RUS:

1. Agreed amounts reported in Form 7 or Form 12 [Form 479 for telephone borrowers] to [Name of Borrower]'s records.

The results of our tests indicate that, with respect to the items tested, [Name of Borrower] complied, except as noted below, in all material respects, with the specific RUS loan and security instrument provisions referred to below. With respect to items not tested, nothing came to our attention that caused us to believe that [Name of Borrower] had not complied, in all material respects, with those provisions. The specific provisions tested, as well as any exceptions noted, include the requirements that:

—The borrower maintains all funds in institutions whose accounts are insured by an Agency of the Federal government [list all exceptions];

—The borrower has obtained written approval of the RUS [and other mortgagees] to enter into any contract for the operation or maintenance of property, or for the use of mortgaged property by others as defined in § 1773.34 (e)(1)(ii) [§ 1773.34 (e)(2)(i) for telephone borrowers] [list all exceptions]; and

—The borrower has submitted its Form 7 or Form 12 [Form 479 for telephone borrowers] to the RUS and the Form 7 or Form 12 [Form 479 for telephone borrowers], Financial and Statistical Report, as of December 31, 19X5, represented by the borrower as having been submitted to RUS is in agreement with the [Name of Borrower]'s audited records in all material respects [list all exceptions].

Comments on Other Additional Matters

In connection with our audit of the financial statements of [Name of Borrower],

nothing came to our attention that caused us to believe that [Name of Borrower] failed to comply with respect to:

—The reconciliation of subsidiary plant records to the controlling general ledger plant accounts addressed at 7 CFR 1773.34 (c)(1) [list all exceptions];

—The clearing of the construction accounts and the accrual of depreciation on completed construction addressed at 7 CFR 1773.34 (c)(2) [list all exceptions];

—The retirement of plant addressed at 7 CFR 1773.34 (c)(3) and (4) [list all exceptions];

—Sales of plant material, or scrap addressed at 7 CFR 1773.34 (c)(5) [list all exceptions];

—The disclosure of material related party transactions, in accordance with Statement of Financial Accounting Standards No. 57, Related Party Transactions, for the year ended December 31, 19X5, in the financial statements referenced in the first paragraph of this report addressed at 7 CFR 1773.34 (f) [list all exceptions]; and

—For electric borrowers only: depreciation rates addressed at 7 CFR 1773.34 (g) [list all exceptions].

For Electric Borrowers Only: Detailed Schedule of Deferred Debits and Deferred Credits

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The detailed schedule of deferred debits and deferred credits required by 7 CFR 1773.34 (h) and provided below is presented for purposes of additional analysis and is not a required part of the basic financial statements. This information has been subjected to the auditing procedures applied in our audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

[The detailed schedule of deferred debits and deferred credits would be included here. The total amount of deferred debits and deferred credits as reported in the schedule must agree with the totals reported on the Balance Sheet under the specific captions of ''Deferred Debits'' and ''Deferred Credits''. Those items that have been approved, in writing, by RUS should be clearly indicated.]

This report is intended solely for the information and use of the board of directors, management, and the RUS and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Certified Public Accountants

Dated: December 19, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 96–93 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Approval of Information Collection Requirements.

SUMMARY: On September 27, 1993, the National Credit Union Administration (NCUA) published a final rule on Truth in Savings (58 FR 50394). At that time, the NCUA had not yet submitted its application to the Office of Management and Budget (OMB) for approval of the information collection requirements found in the regulation (see 58 FR 50444, 9/27/93). On July 18, 1994, the NCUA published the collection requirements in the Federal Register (59 FR 36451), notifying the public that the requirements had been submitted to OMB for approval and seeking public comment on the requirements. The information collection requirements in the final rule were approved by the Office of Management and Budget on September 29, 1994. The control number assigned for this rule is 3133–0134. Notice of this approval appeared in the Federal Register on November 21, 1994 (59 FR 59899). The Federal Register determined that the notice was inadequate, hence this new notice is provided.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: Becky Baker, Secretary of the Board, National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Special Counsel to the General Counsel, telephone: (703) 518–6540, at the above address.

By the National Credit Union Administration Board on December 27, 1995.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. 96–46 Filed 1–2–96; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. 94–ANE–60; Special Condition No. 35–ANE–02]

Special Conditions; Hamilton Standard Model 568F Propeller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Hamilton Standard Model 568F propeller with electronic propeller and pitch control system. The applicable regulations currently do not contain adequate or appropriate safety standards for constant speed propellers with electronic propeller and pitch control. These special conditions contain additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 35 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (617) 238–7112; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1994, Hamilton Standard applied for type certification for a new Model 568F propeller. The new propeller would use a new electronic propeller and pitch control system in place of the primary governor control and synchrophaser unit.

The existing propeller pitch control is monitored by a governor which senses propeller speed and adjusts the pitch to absorb the engine power and therefore maintains the propeller at the correct RPM. When the primary governor fails, the propeller pitch is controlled by an overspeed governor. This type of system is conventional and its airworthiness considerations are addressed by part 35 of the FAR's.

The FAA has determined that special conditions are necessary to certificate a Hamilton Standard electronic propeller and pitch control in place of the primary governor control and synchrophaser unit for the Model 568F propeller. A Notice of Proposed Special Conditions was published in the Federal Register on January 20, 1995 (60 FR 4114) for the Hamilton Standard Model 568F propeller with electronic propeller and pitch control system. This control is designed to operate a mechanical and hydraulic interface for the engine and propeller. It commands speed governing, synchrophasing and provides beta scheduling. Electronic propeller and pitch controls introduce potential failures that can result in hazardous conditions. These types of

failures are not addressed by the requirements of part 35. These failures can lead to the following possible hazardous conditions:

(1) Loss of control of the propeller,

(2) Instability of a critical function,

(3) Unwanted change in propeller pitch causing improper thrust/overspeed, and

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Certification issues that must be addressed are possible loss of aircraft-supplied electrical power, aircraft supplied data, failure modes, environmental effects including lightning strike sand high intensity radiated fields (HIRF) and software design.

The FAA finds that under the provisions of § 21.16 of the FAR, additional safety standards must be applied to the Hamilton Standard electronic propeller control for Model 568F propellers to demonstrate that it is capable of acceptable operation.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Hamilton Standard must show that the Model 568F propeller meets the requirements of the applicable regulations in effect on the date of the application. Those FAR's are § 21.21 and part 35, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 35, as amended, do not contain adequate or appropriate safety standards for the Model 568F propeller. Therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with §11.49 of the FAR's after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Due consideration has been given to the comments received.

One commenter states concern that the term ''unacceptable change'' is vague and could lead to multiple interpretations if the term was not defined in the special condition.

The FAA agrees, and the term ''unacceptable change'' has been removed from the text and replaced with the term ''hazardous'', which is defined in the special condition.

The commenter also states concern with system redundancy and states that FAR 25.1309, its associated Advisory Circular and a Failure Modes Effects Analysis should be included in the special conditions.

The FAA disagrees. The special condition as written in paragraph (a)(2) addresses the commenter's concerns by requiring that the propeller be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components of the propeller control system, result in a hazardous condition. Also, the propeller manufacturer includes a Failure Modes Effects Analysis (FMEA) report as part of the data required for propeller certification. This same report is submitted to the airframe manufacturer for incorporation into aircraft certification documentation to show compliance with FAR 25.1309. Therefore, the commenter's concerns are already included in the certification documentation and a special condition is not needed.

After careful review of the available data, including the comments noted above, the FAA determined that air safety and the public interest require the adoption of these special conditions with the changes discussed previously.

Conclusion

This action affects only the Hamilton Standard Model 568F propeller with a new system of electronic propeller and pitch control. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704; 14 CFR 11.28, 21.16.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Federal Aviation Administration (FAA), the following special conditions are issued as part of the type certification basis for the Hamilton Standard Model 568F propeller and pitch control system. Considering that electronic propeller and pitch control systems introduce potential failures that can result in hazardous conditions, the following special conditions are issued.

(a) Each propeller and pitch control system which relies on electrical and electronic means for normal operation must:

(1) Be designed and constructed so that any failure or malfunction of aircraft-supplied power or data will not result in a hazardous change in propeller pitch setting or prevent continued safe operation of the propeller.

(2) Be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components, or mechanical and hydraulic interface of the propeller control system, result in a hazardous condition.

(3) Be tested to its environmental limits including transients (variations) caused by lightning and high intensity radiated fields (HIRF) and demonstrate no adverse effects on the control system operation and performance or resultant damage. These tests shall include, but not be limited to, the following:

(i) Lightning strikes, such as multiple-stroke and multiple-burst;

(ii) Pin-injected tests to appropriate wave forms and levels;

(iii) HIRF susceptibility tests.

(4) Be demonstrated by analysis/tests that associated software is designed and implemented to prevent errors that would result in a hazardous change in propeller pitch or a hazardous condition.

(5) Be designed and constructed so that a failure or malfunction of electrical or electronic components in the propeller control system could not prevent safe operation of any remaining propeller that is installed on the aircraft.

(b) For purposes of these special conditions, a hazardous condition is considered to exist for each of the following conditions:

(1) Loss of control of the propeller,

(2) Instability of a critical function,

(3) Unwanted change in propeller pitch causing improper thrust/overspeed, and

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Issued in Burlington, Massachusetts, on December 19, 1995.

James C. Jones,

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

[FR Doc. 96–55 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–193–AD; Amendment 39–9479; AD 96–01–03]

Airworthiness Directives; Boeing Model 747–100 and –200 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 Boeing Model 747–100 and –200 series airplanes. This action requires a revision of the Airplane Flight Manual (AFM) and of the Airplane Weight and Balance Supplement to restrict the running load and maximum total payload to a suitable level. This amendment is prompted by a determination that these airplanes are incapable of carrying the currently certified payload limits due to the missing external structural doublers located forward of the surround structure of the main deck side cargo door, and deficiencies in the main deck floors. The actions specified in this AD are intended to prevent collapse of the aft fuselage due to inadequate strength in the airplane structure, and subsequent separation of the aft fuselage from the airplane.

DATES: Effective January 30, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

History of Relevant Supplemental Type Certificates (STC)

In 1988, the FAA approved two STC's. The first STC, SA2322SO, modified a Boeing Model 747–100 series airplane from a passenger configuration to a special freighter configuration by adding a main deck side cargo door. In order to install the main deck side cargo door, this modification entailed cutting a 324 square foot hole in the side of the fuselage from body stations 1740 to 1960; however, the STC did not provide for reinforcement of the fuselage skin, forward of the main deck side cargo door. The second STC, SA2323SO, further modified this airplane by adding a cargo floor and changing the associated systems. These modifications were accomplished by the Pemco Corporation. The FAA-approval of these two STC's by the Atlanta Aircraft Certification Office was based on an incorrect finding that the design was identical to the previously FAA-approved modification of the Model 747 special freighter airplanes. Subsequently, these STC's were sold to GATX-Airlog Company, which converted nine more Model 747–100 series airplanes from a passenger configuration to a special freighter configuration in accordance with these two STC's.

In 1994, the GATX-Airlog Company applied for approval of a new STC, SA4227NM-D, to modify a Model 747–200 series airplane from a passenger configuration to a special freighter configuration. The approval of this STC was based on the data that were submitted for the two previous STC's.

Subsequently, the weight and balance limitations for all three of these STC's were modified by STC SA5199NM (for Model 747–100 series airplanes) and STC SA5759NM (for Model 747–200 series airplanes). These new weight and balance limitations increased the cargo payload for airplanes modified to a special freighter configuration in accordance with the three earlier STC's. The GATX-Airlog Company received approval of these latter two STC's based on the assumption that the data submitted for the three earlier STC's were structurally satisfactory and complied with the applicable regulations.

History of Relevant AD's

On December 27, 1994, the FAA issued AD 95–01–04, amendment 39–9115 (60 FR 2005, January 6, 1995), applicable to Model 747–100 series airplanes modified in accordance with STC SA2322SO. That AD requires a one-time detailed visual inspection of the lap joint of stringer 4L from fuselage stations 1660 to 2040 to detect discrepancies (such as corrosion, cracking, open holes, misdrilled holes, and any freeze plugs in the fuselage skin and internal stringer or longerons). That AD also requires that operators submit a report of their findings to the FAA. That AD was prompted by reports of ''hidden'' open fasteners holes in the middle row of the lap joint, as well as misdrilled holes, elongated holes, and ''figure eight'' holes, and short edge margins in the fastener holes of the fuselage skin. These reports were received from operators of Model 747–100 series airplanes that had been modified in accordance with STC SA2322SO. The actions required by AD 95–01–04 are intended to prevent reduced fatigue life of the fuselage in the area in which holes are found.

In response to the reporting requirement of that AD, the FAA received reports of 216 misdrilled, open, or short-edged margin holes that were filled with random fasteners on a single airplane. The FAA has also learned from these reports that the skin lap splice at stringer 4L has had to be replaced on all of the inspected airplanes because of the severity of the discrepancies found during the inspections required by that AD. Further, another operator reported finding five body frames that did not have inner chord attachments installed above the main deck side cargo door. The FAA has received reports of multiple misdrilled fasteners where the main deck floor beams attach to the existing frame of the airplane, which cause the frames to be extremely susceptible to early fatigue failure. The FAA finds that failure of a single frame would not significantly affect the airplane's fail-safe design; however, misdrilled fasteners were found on both sides of most of the fuselage frames. Because the frames on airplanes that have been converted in accordance with the subject STC's have reduced strength due to numerous misdrilled holes, the FAA has determined that failure of any single frame on these airplanes will result in structurally significant higher loads in the adjacent frames.

These manufacturing deficiencies have further reduced the structural capability of these airplanes. Because of the variability of the manufacturing defects and the missing structural components, it is impossible for the FAA to determine the extent of the reduction in the structural capability of these airplanes without re-examining each airplane that was reconfigured in accordance with the subject STC's. Since all of the affected airplanes have not yet been inspected in accordance with the requirements of AD 95–01–04, the FAA has not completed a comprehensive review to determine final corrective action.

On August 3, 1995, the FAA issued AD 95–15–52, amendment 39–9335 (60 FR 40748, August 10, 1995), applicable to Model 747–100 series airplanes

modified in accordance with STC SA2322SO, SA2323SO, or SA5199NM; and Model 747–200 series airplanes modified in accordance with STC SA4227NM–D or SA5759NM. That AD requires a revision of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) and of the Limitations Section of the Airplane Weight and Balance Supplement to restrict cargo loading from fuselage stations 1265 to 1480 (approximately 200 inches of the center section of the fuselage). That AD provides for the removal of the restrictions following accomplishment of a modification of the longitudinal floor beams of the affected fuselage stations in accordance with a method approved by the FAA. That action was prompted by a determination that the strength in the floor beams was inadequate between fuselage stations 1265 to 1480. The actions specified in that AD are intended to prevent failure of the longitudinal floor beams in the center section of the fuselage, which may cause the keel beam to fail and result in rupture of the fuselage. (This AD did not address any section of the fuselage other than the center section of the fuselage.)

Since the issuance of AD 95–15–52, an operator of Model 747–100 and –200 series airplanes applied for approval of an alternative method of compliance (AMOC) to AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990). AD 90–06–06, which is applicable to certain Boeing Model 747 airplanes, requires structural modifications of older airplanes, including a requirement to modify the lower lap joints of the fuselage skin. This operator's airplanes were converted from a passenger configuration to a special freighter configuration in accordance with STC's SA2322SO and SA2323SO (for Model 747–100 series airplanes) and SA4227NM–D (for Model 747–200 series airplanes).

The FAA's Findings

An FAA review of the data submitted to approve this AMOC, and an FAA evaluation of the health of the affected airplanes based upon the in-service history of the fleet, have led the FAA to make the following findings: Airplanes modified in accordance with all of the STC's discussed above are unsafe, and the FAA approved these STC's in error. Specifically, the FAA has determined that the ultimate strength of the main deck floor and the ultimate strength of the surround structure of the main deck side cargo door are inadequate.

The floor system lacks stabilization straps that attach to the main deck floor beam lower chord. These stabilization straps would prevent the floor beam lower chord from buckling under ultimate design load conditions. The floor is structurally inadequate without these straps. The main deck floor beams are capable of sustaining approximately three-fourths of the ultimate gust conditions, and have only a small margin for limit gust conditions. Since the failure mode for these floor beams is column buckling instability, there would be no warning prior to collapse of the main deck floor. Consequently, inspections would be ineffective to detect this failure mode prior to collapse of the floor. Therefore, the only immediate option to prevent collapse of the main deck floor during a gust load condition would be to reduce the weight of the cargo on the main deck of the airplane.

Further, the FAA finds that the STC's did not provide needed reinforcement of the fuselage skin, forward of the main deck side cargo door. Such lack of reinforcement results in an unacceptably high concentration of shear and bending stress and the inability to react to various flight maneuver loads.

The FAA finds that the non-reinforced fuselage skin is not structurally capable of sustaining flight maneuvers with a 1.5 ultimate safety factor. For example, the 1.5 ultimate safety factor applied to the 2.5g dive maneuver load condition, requires that the airplane be capable of sustaining, without failure, 3.75g ultimate load. These airplanes, when loaded with full cargo (and with a forward center of gravity), can sustain only 55 percent of this 3.75g ultimate flight condition. Analysis of the non-reinforced structure for three other critical load conditions [identified in part 25, ''Airworthiness Standards: Transport Category Airplanes,'' of the Federal Aviation Regulations (14 CFR 25) as abrupt-up elevator, dynamic landing and dynamic lateral gust] yields a similarly low structural capability.

The non-reinforced fuselage skin may result in an instability failure that provides no indication of impending failure until the skin and stringers buckle. In the worst case, the aft fuselage may collapse and separate from the airplane. There are no structural inspections that can detect or prevent this type of failure.

In-Service History

In 1991, a Model 747–100 series airplane that had been modified in accordance with these STC's was involved in an incident in which the pilot successfully recovered the airplane from a 3.0g dive maneuver. This airplane had a total payload of 163,800 pounds, which was much less than the maximum allowable payload of 214,300 pounds. The center of gravity (18 percent) was well within the allowable flight manual range of 12 percent (forward limit) to 21 percent (aft limit) for takeoff. The FAA estimates that during this 3.0g maneuver, the airplane loads were only 10 percent less than those that would have caused the fuselage to collapse. The FAA has recently determined by analysis that, if only 6,700 pounds of additional cargo had been loaded in the front portion of the fuselage, the airplane's center of gravity would have shifted forward three percent. The resulting stress levels would exceed the airplane's structural capability, which could lead to separation of the aft fuselage from the airplane. In light of the weight of a Model 747 series airplane (738,000 pounds), 6,700 pounds is insignificant and is just 3.1 percent of the the maximum allowable payload (214,300 pounds).

The operators of the 10 affected airplanes have reported four in-flight events that have resulted in substantial structural damage to these airplanes, which are among the oldest Model 747 series airplanes in operation (the youngest of which is over 24 years old). In addition to the 3.0g maneuver, discussed above, the FAA has received the following reports:

1. A report of total engine separation due to intentional departure into known severe turbulence;
2. A report of uncontained engine failure (more than 180 degrees) that resulted in deformation of the pylon and subsequent damage to the wing and fuselage due to projectile penetrations (survivability of such in-flight damage is dependent upon the integrity of the fuselage structure); and
3. A report of a severe landing that resulted in a 40-foot by 3-foot hole in the aft fuselage.

The FAA's Consideration of All Relevant Factors

Based upon National Aeronautics and Space Administration (NASA) Contractor Report 181909, DOT/FAA-CT–89/36–IV, ''The NASA Digital VGH Program,'' Volume IV, ''B747 Data 1978–1980,'' dated December 1989, the FAA finds that, typically, a Boeing Model 747 series airplane will encounter turbulence or a flight maneuver above 2.0g every 15,000 flight hours, which would exceed the structural capability of the affected airplanes if cargo were critically loaded. Therefore, the FAA has determined that another major incident on these affected

airplanes is likely to occur in the near future. If the airplane is critically loaded, analysis indicates that the airplane will be unable to sustain ultimate load, and in certain cases limit load.

The FAA has considered the possibility of requiring modifications to reinforce the subject structure, but finds that they are not feasible at this time because internal loads data were not generated to substantiate the original STC. The lack of internal loads data makes the determination of adequate reinforcement impossible. Therefore, until such data are generated, structural modifications are not a viable option to restore safety to these airplanes.

The FAA has considered imposing altitude, airspeed, center of gravity, and payload limitations on these airplanes. The FAA finds that a reduction in altitude would have little effect on any of the critical flight conditions since three critical flight conditions (i.e., 2.5g dive maneuver, abrupt-up elevator, and dynamic lateral gust) can occur at any altitude. (The remaining critical flight condition is a landing condition.)

The FAA finds that a reduction in allowable airspeed would have the greatest effect on the structural loads that result from abrupt-up elevator and lateral gust conditions. However, to provide full structural capability, the airspeed would have to be reduced below the airplane's design maneuver speed (278 knots) to an airspeed close to the flaps-up, stall speed and stick shaker activation speed (215 knots) for these airplanes. Additionally, the critical shear loads resulting from the dynamic landing condition are at approach speeds that cannot be reduced. Therefore, reducing airspeeds would not be a safe option.

Since the horizontal stabilizer balances loads during flight maneuvers, a limitation of the airplane's center of gravity would have a significant effect in reducing the shear and bending loads on the fuselage that result from the required 3.75g dive maneuvers (which is 2.5g multiplied by the required 1.5 safety factor). For example, a 20 percent forward center of gravity limitation would yield full structural capability for these airplanes during a 2.5g dive maneuver with a 1.5 ultimate safety factor. This limitation would not require any new payload restrictions for the dive maneuver requirements, but does not solve the negative margins of safety for the other cases.

The FAA finds that a reduction in payload is the only operational limitation that would have an effect on structural loads that result from dynamic landing, abrupt-up elevator, and gust conditions. Removal of payload aft of the main deck side cargo door (fuselage station 1720) would provide a suffcient reduction in the critical shear and bending loads on the fuselage during these conditions.

Substantiation of the FAA's Findings

The FAA has reviewed data from the following sources to verify its findings of large negative margins of safety.

1. The FAA has reviewed Hayes International Corporation Engineering Report 8813, ''Structural Substantiation for Main Deck Side Cargo Door Modification Installation and 'E' Class Cargo Compartment for the Boeing 747–100 Aircraft,'' dated March 22, 1988. This report documents over 100 findings of negative margins of safety on numerous pages. One such example can be found on page 7.2.127 of this report, which documents many negative margins of safety, one as large as -0.44 at fuselage station 1680 of the floor beam. The report recommends the installation of a reinforcement strap to ensure the structural integrity of the fuselage in this area of the airplane. However, the report does not contain any engineering analysis to determine whether the installation of a reinforcement strap would resolve the negative margins of safety. The FAA inspected one airplane and determined that some of the reinforcement straps were not installed on the fuselage foward of the main deck floor. The FAA used the Hayes International Report 8813 internal loads data for the main deck floor and conducted an analysis that verified the negative margins of safety documented in the report. The report contains no analysis or internal loads data for the missing structural doublers forward of the main deck side cargo door cutout.

2. The FAA has reviewed data submitted by Elsinore Aerospace Services, on behalf of the GATX-Airlog Company, to the FAA for approval of a modification that converts Model 747 combi airplanes to a special freighter configuration. The design and data submitted for the forward fuselage were identical to the design and data submitted for the subject STC's. The Elsinore data confirmed the FAA's findings of negative margins of safety in the existing main deck floor. Elsinore Aerospace Services, together with the FAA, identified design deficiencies of the main deck floor and developed corrective measures for combi airplanes to meet the minimum level of safety required by part 25 of the Federal Aviation Regulation (14 CFR 25). However, similar corrective measures have not yet been developed for the Model 747–100 and –200 series airplanes.

3. The FAA has reviewed Boeing Commercial Airplane Group data that were used to convert Model 747 series airplanes from a passenger configuration to a special freighter configuration in accordance with a design developed by Boeing. The FAA Designated Engineering Representatives (DER) at the Boeing Commercial Airplane Group verified that large negative margins of safety would exist on airplanes modified in accordance with its design if the external skin doublers at the cargo door were not installed. The FAA reviewed and concurred with this analysis, and concluded that because of the similarity of the Boeing design (having the doublers removed) with the GATX design, the GATX design would have similar negative margins of safety of approximately −0.45 for the non-reinforced fuselage forward of the main deck side cargo door.

4. The FAA has conferred with the FAA DER's at the GATX-Airlog Company working on location at the Israel Aircraft Industries (IAI). These DER's are currently analyzing the design of the GATX-Airlog Company modification of the forward main deck side cargo door. Although the IAI report has not yet been submitted in final form to GATX, preliminary data reviewed by the DER's, on behalf of the FAA, indicate that large negative margins of safety exist forward of the main deck side cargo door, similar to those obtained in the Boeing and FAA analysis.

5. On December 20, 1995, the FAA held a meeting/telecon with operators and interested parties to gather more data. However, no data were presented to refute the FAA's findings of multiple unsafe conditions that were substantiated by all of the sources of data, discussed above. At this meeting, a consultant for the GATX-Airlog Company presented data (derived from the 3.0g dive maneuver incident) to demonstrate that the affected airplanes are capable of withstanding structural loads in the cargo door surround structure in excess of the payload restriction required by this AD. The FAA finds that this data for applied vertical loads (by far the largest component in determining margins of safety) are essentially the same as those determined by the FAA analysis, and confirms the FAA's findings of unsafe conditions.

This consultant's data did raise one issue that had not been considered by the FAA prior to the December 20, 1995, meeting. The consultant suggested that the data showed the possibility of

additional small lateral compression stresses resulting from minor lateral loads having occurred during the 3.0g dive maneuver, thereby indicating that the cargo door surround structure might be slightly stronger than that previously determined by the FAA. The data to support this conclusion had not been fully evaluated by either the consultant or the FAA and estimates of increments of strength cannot be definitively verified. The estimates for the loads in the analysis were extrapolated from the airplane's flight data recorder and the actual fuselage loads of the airplane during the 3.0g dive maneuver and the resulting stresses on the cargo door surround structure have not been demonstrated by instrumentation and tests. Without such tests, any conclusion regarding the strength of the structure would be speculative. The FAA's determinations of the unsafe conditions and proposed operational limitations are based on reliable analysis techniques and extensive instrumented testing of the Model 747 series airplane by the Boeing Commercial Airplane Group.

At the meeting, GATX-Airlog Company requested that the FAA delay issuance of this rulemaking action until all data have been finalized and a corrective modification has been designed, developed, and approved. The FAA has determined that delaying this AD action would be inappropriate since multiple unsafe conditions exist and the large negative margins of safety present an unacceptable risk. Therefore, the FAA has concluded that the level of risk associated with these unsafe conditions, including the potential for total loss of the aircraft, is so great that a delay cannot be justified. Furthermore, a delay in issuance of this AD action would be contrary to the interest of public safety, since the nature of the unsafe conditions is such that failure cannot be predicted. Failure under the currently authorized operating conditions is predicated upon the occurrence of uncontrollable factors such as wind gusts, maneuver loads, and hard landings.

Requirements of This AD

Consequently, the FAA has determined that a combination of operational payload limitations must be imposed to reduce the shear and bending loads forward of the main deck side cargo door. A 20 percent forward center of gravity limitation, together with the removal of all payload aft of fuselage station 1720 will reduce both the shear and bending loads on the fuselage during all critical flight conditions. These limitations still allow operation of the airplane with a center of gravity between 20 percent and 33 percent (with full flight range capability).

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes having these STC's as part of their type design, this AD is being issued to prevent structural collapse and subsequent separation of the aft fuselage from the airplane. This AD requires a revision to the Limitations Section of the FAA-approved AFM and the Limitations Section of the Airplane Weight and Balance Supplement to restrict the running load (which is the maximum allowable linear load per inch), maximum total payload, and center of gravity limits.

This AD also provides for the removal of these restrictions following accomplishment of a modification of the airplane structure that corrects all structural deficiencies that restores the airplane to meet or exceed the requirements of part 25 of the Federal Aviation Regulations (14 CFR 25) in accordance with a method that is approved by the Manager of the Seattle Aircraft Certification Office.

This AD's restrictions are in addition to, not in lieu of, the restriction imposed by AD 95–15–52. Therefore, the revision to the Limitations Section of the AFM and the Airplane Weight and Balance Supplement required by this AD, does not supersede the revision required by AD 95–15–52. Further, modifications approved as terminating action for the restriction required by AD 95–15–52, amendment 39–9335, are not considered to be approved as terminating action for the restrictions required by this AD.

The load level established by this AD is based upon an FAA evaluation of the maximum payload that these airplanes are capable of carrying without external structural doublers installed and without correction of inadequacies in the main deck floor. The FAA has determined that the restrictions imposed by this AD will provide a sufficient level of safety for airplanes on which the external doublers are missing and structural inadequacies of the main deck floor and manufacturing deficiencies exist.

Impact of the Limitations Imposed by the AD

The FAA is aware that the operational limitations imposed by this AD may severely impact the economic viability of the operators of these modified airplanes. In effect, the AD would limit total payload to 120,000 pounds from a maximum of 220,000 pounds. This may result in the operators' inability to operate economically because operators may be unable to obtain contracts that guarantee payload capabilities of 200,000 pounds. The average payload per flight is approximately 150,000 pounds, and operators may be unable to complete heavy-loaded segments of multiple-stop flights. These limits occur because the AD specifies that nothing is to be carried between body stations 1720 and 2360 for both the main deck and lower deck cargo areas and operation is prohibited forward of 20 percent center of gravity. Nonetheless, the FAA must impose these restrictions to ensure continued operational safety of these airplanes.

The FAA further acknowledges that these restrictions may be conservative. However, an alternative solution to this complex matter—one which will ensure the safety of these airplanes and the flightcrews—has not yet been developed. Operators should note that other operational limitations data may be submitted to the FAA for approval under the alternative methods of compliance provision of paragraph (c) of the AD.

In a meeting on December 27, 1995, the operators asked that the effective date of the AD be delayed until corrective measures can be developed. The operators also indicated that they would be removing the 10 affected airplanes from service no later than January 31, 1996. The effective date of this AD is January 30, 1996, with a compliance time of 48 hours for implementing the AD. As a result of the operators' commitment, the aircraft will be out of service pending repairs before the expiration of the compliance time.

The FAA intends to investigate other types of loading conditions to determine whether additional operational limitations must be imposed to address the structural inadequacies of the main deck floor and other areas that have not yet been identified. If, after review of such data, the FAA determines that the data indicate that further restrictions are necessary, the FAA may consider further rulemaking to implement appropriate corrective action.

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–193–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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 the following new airworthiness directive:

96–01–03 Boeing: Amendment 39–9479. Docket 95–NM–193–AD.

Applicability: Model 747–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA2322SO, SA2323SO, or SA5199NM; and Model 747–200 series airplanes modified in accordance with STC SA4227NM–D or SA5759NM; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) 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 structural collapse and subsequent separation of the aft fuselage from the airplane, accomplish the following:

(a) Within 48 clock hours (not flight hours) after this AD becomes effective, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) and the Limitations Section of the Airplane Weight and Balance Supplement to include the following information. This may be accomplished by inserting a copy of this AD in the AFM and the Airplane Weight and Balance Supplement.

''PAYLOAD LIMITATIONS:

Do not exceed 0.00 pounds/inch running load between body stations 1720 and 2360. The maximum total payload between body stations 1720 and 2360 shall not exceed 0.00 pounds for both main deck and lower deck cargo.

The currently certified center of gravity limitations defined in STC's SA2322SO, SA2323SO, and SA5199NM (for Model 747–100 series airplanes) and STC's SA4227NM–D and SA5759NM (for Model 747–200 series airplanes) shall be limited to prohibit operation forward of 20 percent center of gravity.''

(b) Accomplishment of a modification of the airplane structure in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, constitutes terminating action for the limitation requirements of paragraph (a) of this AD. The AFM limitation and the Weight and Balance Supplement limitation may be removed following accomplishment of such a modification.

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

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

(e) 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.

(f) This amendment becomes effective on January 30, 1996.

Issued in Renton, Washington, on December 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–62 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–31]

Amendment of Class E Airspace; Flagstaff, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Flagstaff, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway

(RWY) 21 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Flagstaff Pulliam Airport, Flagstaff, AZ.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On November 1, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Flagstaff, AZ (60 FR 55503). This action would provide adequate controlled airspace to accommodate a GPS SIAP to RWY 21 at Flagstaff Pulliam Airport, Flagstaff, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations 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 designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Flagstaff, AZ. The development of a GPS SIAP to RWY 21 has made this action necessary. The intended effect of this action is to provide adequate airspace for aircraft executing the GPS RWY 21 SIAP at Flagstaff Pulliam Airport, Flagstaff, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 10034; 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 is revised 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 the 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.

* * * * *

AWP NV E5 Flagstaff, AZ [Revised]

Flagstaff Pulliam Airport, AZ
(Lat. 35°08′18″ N, long. 111°40′17″ W)
Flagstaff VOR/DME
(Lat. 35°08′50″ N, long. 111°40′27″ W)

That airspace extending upward from 700 feet above the surface within an 3.6-mile radius of Flagstaff Pulliam Airport, and within a 10-mile radius of the Flagstaff VOR beginning at a line 1.8 miles northeast of and parallel to the Flagstaff VOR 043° radial extending clockwise to a line 1.8 miles west of and parallel to the Flagstaff VOR 198° radial. That airspace extending upward from 1,200 feet above the surface within 8.3 miles each side of the Flagstaff VOR 127° and 307° radials, extending from 7 miles northeast to 16.5 miles southeast of the Flagstaff VOR and that airspace bounded by a line beginning at lat. 35°13′32″ N, long. 111°04′31″ W; to lat. 35°17′17″ N, long. 111°02′35″ W; to lat. 35°22′00″ N, long. 111°16′43″ N; to lat. 35°24′00″ N, long. 111°26′16″ W; to lat. 35°18′00″ N, long. 111°35′33″ W; thence clockwise via a 10-mile radius of the Flagstff VOR to lat. 35°16′34″ N, long. 111°32′42″ W; to lat. 35°19′58″ N, long. 111°24′10″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 35°03′00″ N, long. 111°21′00″ W; to lat. 35°02′00″ N, long. 111°15′00″ W; to lat. 35°01′00″ N, long. 111°22′00″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 11, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–57 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–32]

Amendment of Class E Airspace; Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Lovelock, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 1 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Lovelock Derby Field, Lovelock, NV.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Lovelock, NV (60 FR 55224). This action would provide adequate controlled airspace to accommodate a GPS SIAP to RWY 1 at Lovelock Derby Field, Lovelock, NV.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations 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 designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) amends the Class E airspace area at Lovelock, NV. The development of a GPS SIAP to RWY 1 has made this action necessary. The intended effect of this action is to provide adequate airspace for aircraft executing the GPS RWY 1 SIAP at Lovelock Derby Field, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 10034; 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 is revised 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 the 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.

* * * * *

AWP NV E5 Lovelock, NV [Revised]

Lovelock Derby Field, NV
(Lat. 40°03′59″ N, long. 118°33′55″ W)
Lovelock VORTAC
(Lat. 40°07′30″ N, long. 118°34′40″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Lovelock Derby Field and within 3.5 miles each side of 349° radial of the Lovelock VORTAC, extending from the 4.3-mile radius to the 10.4 miles north of the Lovelock VORTAC. That airspace extending upward from 1,200 feet above the surface beginning at lat. 40°37′30″ N, long. 118°36′34″ W; to lat. 40°12′00″ N, long. 118°55′04″ W; to lat. 40°03′00″ N, long 118°52′04″ N; to lat. 40°22′19″ N, long. 118°14′00″ W; to lat. 40°32′00″ N, long. 118°14′00″ W; to lat. 40°23′00″ N, long. 118°29′00″ W; to lat. 40°27′00″ N, long. 118°34′04″ W, to the point of beginning and that airspace beginning at lat. 40°05′00″ N, long. 118°28′29″ W; to lat. 40°06′00″ N, long. 118°23′04″ W; to lat. 40°03′00″ N, long. 118°22′04″ W; to lat. 40°00°00″ N, long. 118°31′44″ W, thence via a 4.3-mile radius of Lovelock Derby Field to the point of beginning and that airspace bounded by a line beginning at lat. 40°23′00″ N, long. 118°29′00″ W; to lat. 40°32′00″ N, long. 118°14′00″ W; to lat. 40°22′00″ N, long. 118°14′00″ W; to lat. 40°18′00″ N, long. 118°23′00″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 11, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–58 Filed 1–2–96; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 88

[AMS–FRL–5347–3]

RIN 2060–AF87

Requirements for Determining Assigned Deterioration Factors for Alternative Fuel Vehicles, Amendments to Labelling Requirements for Inherently Low-Emission Vehicles, and Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule (DFRM).

SUMMARY: This rulemaking promulgates actions to clarify and streamline existing regulations for certifiers and purchasers of clean-fuel and/or alternative fuel vehicles. This rule reduces the regulatory burden for industry, and it is highly accommodating to their concerns. To temporarily reduce the certification burden of the emerging industry of aftermarket conversions of alternative fuel vehicles, EPA will take action in this rule that will provide flexibility in the regulations for the determination of assigned deterioration factors for alternative fuel vehicles.

To encourage the production of Inherently Low-Emission Vehicles (ILEVs), this rule also promulgates an amendment to allow additional options for external ILEV label dimensions. Also in this rule, EPA will amend two California Pilot Program (CPP) requirements: the method for determining a manufacturer's clean-fuel vehicle (CFV) sales quota and the method for administering CPP credits. This amendment to the method of administering credits will reduce a manufacturer's reporting requirements by a factor of four. Finally, this rule includes several additional technical amendments to the regulations issued under Clean Fuel Fleet Program and California Pilot Program final rules.

DATES: This rule is effective March 4, 1996 unless notice is received by February 2, 1996 that adverse or critical comments will be submitted on a specific element of this rule. EPA will publish a timely document in the Federal Register withdrawing that portion of the rule for which adverse comments were received.

ADDRESSES: Interested parties may submit written comments in response to this rule (in duplicate if possible) to Public Docket Nos. A–92–30 and A–92–14 for alternative fuel vehicle provisions, Public Docket No. A–92–30 for ILEV and Clean Fuel Fleet Program provisions, and Public Docket No. A–92–69 for California Pilot Program provisions, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket Nos. A–92–30, A–92–14, or A–92–69, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. A copy of the comments should also be sent to Mr. Bryan Manning (SRPB–12), U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Materials relevant to this rule have been placed in Docket Nos. A–92–30 and A–92–14 or A–92–69 by EPA. The docket is located at the above address and may be inspected from 8 a.m. to 5:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

A copy of this action is available through the Technology Transfer Network Bulletin Board System (TTNBBS) under OMS, Rulemaking and Reporting, Alternative Fuels, Clean Fuel Fleets. TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning (SRPB–12), U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7832; FAX: 313–741–7816.

SUPPLEMENTARY INFORMATION: Because EPA considers this action to be noncontroversial, we are finalizing it without prior proposal. The action will become effective March 4, 1996 unless adverse comments are received by February 2, 1996. If EPA receives adverse comments, only the affected portions of the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule (please see proposed rule entitled, ''Sales Volume Limit Provisions for Small-Volume Manufacturers Certification of Clean-Fuel and Conventional Vehicle Conversions and Related Provisions,'' published simultaneously in the ''Proposed Rules'' section of this Federal Register).

I. Description of Action

The alternative fuel vehicle industry is likely to expand considerably over the next several years in response to Clean Air Act (CAA), the Energy Policy Act, and other alternative fuel fleet and vehicle programs at the state and local levels. Nevertheless, EPA believes alternative fuel vehicles will still have limited sales in comparison to conventional vehicles. Thus, due to this potential inequity in sales, EPA believes it may be difficult for aftermarket converters of alternative fuel vehicles to recover their certification cost over the next several years. Since EPA encourages the production of certified alternative fuel vehicles for air quality purposes, EPA believes it will be wise to temporarily reduce the certification burden for aftermarket converters of alternate fuel vehicles as described below.

A. Flexibility in Certification Procedure for Determining Deterioration Factors

As is shown in 40 CFR 86.094–14, the Small-Volume Manufacturers (SVM) Certification Program exempts entities seeking a Certificate of Conformity with total annual vehicle/engine sales less than 10,000 from EPA's full certification program. Specifically, the SVM provisions relieve such entities from some elements otherwise required to demonstrate the durability of emissions over the life of the vehicle. Instead of accumulating mileage on actual prototype vehicles, the SVM program in some cases permits the use of EPA-assigned values for emission deterioration. This can be of significant economic benefit to entities manufacturing or converting relatively few vehicles. The standard protocol EPA uses to assign deterioration factors is described in EPA Advisory Circular No. 51–C.

Currently, small volume manufacturers with aggregated sales of less than 301 vehicles per year or without durability data may use assigned deterioration factors of the 70th percentile deterioration factors from industry-wide data based on previously completed durability data vehicles. In addition, manufacturers with aggregated sales from 301 to 9,999 may calculate and use assigned deterioration factors, but these assigned deterioration factors must be no less than either the 70th percentile or the average of all the manufacturer's deterioration factor data (whichever is less). (See 40 CFR 86.094–14(c)(7)(i)(C)). However, since alternative fuel vehicles are an emerging industry, manufacturers of these vehicles and EPA currently have an extremely limited database from which to calculate assigned deterioration factors. According to current EPA regulations, many small-volume manufacturers of alternative fuel vehicles would be required to determine deterioration factors by conducting full useful-life tests since there is an insufficient database of previously-certified vehicles on which to base deterioration factors.

To enable certifiers of alternative fuel vehicles to avoid the burden of full certification testing for the economic reasons discussed above and to support the development of alternative fuel vehicle technology, EPA believes it is wise to provide flexibility in the regulations for the determination of assigned deterioration factors for alternative fuel vehicles. Thus, EPA will permit manufacturers to use assigned deterioration factors that the Administrator determines by alternative methods if no deterioration factor data (either the manufacturer's or industry-wide deterioration factor data) are available, as detailed in section 86.094–14(a)(2) of the regulations associated with today's rule. Following promulgation of this provision, EPA expects to issue guidance describing the specific alternative methods used in determining assigned deterioration factors for gaseous-fueled vehicles through model year 2000.[1]

[1] The assigned deterioration factors for gaseous-fueled vehicles and the specific methods used to determine these factors are expected to be specified in a ''Dear Manufacturer'' letter (advisory letter) that would be available in docket A–92–14 and A–92–30 and on TTNBBS.

B. Amendments to the Required Dimensions of Inherently Low-Emission Vehicle (ILEV) Exterior Labels

In the regulations for the Clean Fuel Fleet (CFF) Credit Program final rule, EPA specified size and shape requirements for ILEV exterior identification labels. The manufacturer or dealer of an ILEV is required to attach one label on the rear of the vehicle and one on each of two sides of the vehicle if requested by a qualifying fleet purchaser. In February 1995, Ford commented[2] that the required dimensions for the rear ILEV labels are inappropriate for certain vehicle models since their vehicle body design makes the placement of such labels on these vehicles difficult or impossible. Ford also stated that safety requirements for lighting and bumpers affect the vehicle body design; in addition, for natural gas vehicles, a separate label is required on the lower right rear of the vehicle by the National Fire Protection Association Safety Standard 52. In April 1995 Ford suggested a much smaller alternative ILEV label design for such vehicle models, which American Automobile Manufacturer's Association (AAMA) agreed to in May 1995.[3] Ford also suggested that the problem of reduced space on the rear of passenger cars also exists for the side of vehicles since fleet advertisements often take up much of the space available on the side of the vehicle.

As indicated in the preamble for the Clean Fuel Fleet Credit Program final rule, EPA intends for ILEVs to be specially and clearly identified since properly labeled ILEVs may be exempt from transportation control measure (TCM) requirements, including high-occupancy vehicle (HOV) lane restrictions. EPA expected ILEVs to look much like conventional vehicles, and thus, the Agency intended for ILEVs to have special labels to clearly indicate to law enforcement officers, as well as the general public, that these vehicles are not violating TCM ordinances.

EPA believes that the distinctive design and shape of AAMA's suggested ILEV label would be consistent with EPA's intent to have ILEVs clearly identified by law enforcement officials, as well as the general public. At the time the CFF Credits/ILEV rule was finalized, EPA was unaware of any vehicle models that would have a conflict with the ILEV

[2] Ford Motor Company, Comments on Reconsideration of ILEV Labelling Requirements, letter from Kelly M. Brown to Margo T. Oge of the U.S. Environmental Protection Agency, February 2, 1995.

[3] Ford Motor Company, ''ILEV Labels'', Facsimile from Sarah Rudy to Bryan Manning of the U.S. Environmental Protection Agency, April 21, 1995.

labeling requirements. Since EPA encourages the production of ILEVs for air quality purposes, EPA will amend the ILEV label regulations in a manner similar to that suggested by AAMA in order to provide additional flexibility for ILEV manufacturers, thus reducing some of the certification burden. To meet industry's vehicle body space concerns while maintaining a label that is clearly identifiable, EPA will provide new optional ILEV labels of smaller dimensions. Specifically, for the sides and rear of an ILEV, EPA will provide an optional ILEV label of smaller dimensions than the existing primary ILEV label and in the distinctive shape of a truncated circle, as specified in 88.312(a)(1) of the regulations in today's rule.

For the rear of an ILEV, existing regulations provide an option to choose a smaller rectangular label, if the larger primary (side) rectangular label cannot be attached to the rear of an ILEV. Today's rule will provide two optional rear labels which could be chosen if neither of the primary labels described above and in section 88.312(a)(1) of the regulations cannot be attached to the rear of an ILEV. One of these rear label options is the existing smaller rectangular label (see section 88.312(c)(2)(ii)(A) of the regulations in today's rule), and the other option is a smaller version of the truncated circular label described above, as detailed in section 88.312(c)(2)(ii)(B) of the regulations associated with today's rule.

C. Method for Determining Each Manufacturer's CFV Sales Requirement Under the Federal California Pilot Program

The California Pilot Program requires that California sales figures from two model years earlier be used to calculate required CFV sales shares (see California Pilot Test Program (CPP) final rule, 59 FR 50066, September 30, 1994). In the proposal for the rulemaking (58 FR 34727, June 29, 1993), EPA requested comment as to whether a manufacturer's share of required CFV sales should be calculated based on sales in the previous model year or sales two model years prior. No comments were received from manufacturers. EPA decided to use model year (MY) sales data from two years prior rather than from the previous model year to provide manufacturers with more time to plan their CFV production.

However, after the CPP rule was finalized, the AAMA notified EPA of their view that basing the calculation on data from two years prior is not practical.[4] According to AAMA, this is because the production volumes would not be established early enough to allow auto manufacturers sufficient planning time to comply with the CFV sales requirements in the California Pilot Program. AAMA suggested that at least a three-year lead time is needed for the completion of the annual production reports, EPA calculation of the manufacturer total sales, and subsequent certification strategy or sales planning by the manufacturers. More specifically, AAMA suggested that a manufacturer's share of CFV sales be the average of two consecutive years based on data from model years three and four years earlier than the model year in question. AAMA believes a two-year average would help level out any fluctuations in the market.

EPA has considered these comments and agrees that using data from the model year two years prior to the year in question does not provide manufacturers enough time to adequately plan their production, since production for the model year in question could be well underway before sales data is available for production planning. (Production under a certificate may begin on January 2 of the calendar year prior to the model year of the certificate and may continue through December 31 of the certification model year.)

Thus, EPA will require that the average California sales figures from three and four model years earlier than the current model year be used by each manufacturer to calculate their required CFV sales share. For example, for the 1997 model year, the average of sales figures from 1993 and 1994 model years would be used to calculate the CFV sales share. This change will have no impact on the overall number of CFVs sold in California; the allocation of those vehicles among manufacturers may change slightly. This change will also reduce the regulatory burden for manufacturers, and EPA believes it is highly accommodating to manufacturers considering that manufacturers did not comment on the method proposed.

D. Reporting Requirements for the Credit Program of the California Pilot Test Program

In the information collection request[5] for the Credit Program for California Pilot Test Program Final Rule (57 FR 60038, December 17, 1992), EPA had requested quarterly reporting of credit use and balance statements to administer the credit program. However, EPA has reevaluated this request and does not believe quarterly reporting is a necessary requirement for administering the CPP credit program. The Agency does not expect the volume or frequency of credit transactions to be substantial enough so as to require such frequent monitoring. EPA now believes that annual reports from the manufacturers of credit use and balances will be sufficient for EPA to adequately administer and enforce the CPP credit program and verify the proper use of traded CPP credits. Thus, EPA will require annual reporting of credit use and balances for the CPP credit program. (See section 88.205–94 (d)(1) and (d)(3)(iii) of the regulations associated with today's rule for further detail.) This change will reduce the manufacturer reporting burden by a factor of four, and thus, EPA believes it is highly accommodating to manufacturers.

E. Technical Amendments to CFV Emission Standards Rulemaking and CFF and CPP Credit Program Rulemakings

1. Redesignation of Paragraph Specifying Methane Analyzer Method Within Description of Exhaust Analytical System

In the regulations for the Clean-Fuel Vehicle Emission Standards final rulemaking (59 FR 50042, September 30, 1994), the specifications for the measurement of methane from heavy-duty exhaust samples, paragraph (b)(2)(iii) of section 86.1311–94 (''Exhaust gas analytical system; CVS bag sample''), were incorrectly designated as a sub-paragraph of paragraph (b)(2), which contains the specifications for the measurement of carbon monoxide from heavy-duty exhaust samples. Thus, in today's action, EPA will redesignate paragraph (b)(2)(iii) as paragraph (b)(3) in section 86.1311–94.

2. Clarification of Applicable Test Procedures for CFV Exhaust Standards for Light-duty Vehicles and Light-duty Trucks

In paragraph (k) of section 88.104–94 of the regulations for the Clean-Fuel Vehicle Standards final rulemaking, EPA specifies that CFV tailpipe emission standards for light-duty vehicles and light-duty trucks shall

[4] American Automobile Manufacturers Association (AAMA), Recommendation on Determination of Manufacturer Quotas for the California Pilot Test Program, Letter from Marcel L. Halberstadt to Tad Wysor of the U.S. Environmental Protection Agency, February 17, 1995.

[5] U.S. Environmental Protection Agency, Office of Mobile Sources, Supporting Statement for Information Collection Request—California Pilot Test Program: Vehicle Credit Program, May 1991.

comply with the following requirement: ''* * * standards in this paragraph shall be administered and enforced in accordance with the California Regulatory Requirements * * *.'' However, in paragraph (l) of section 88.104–94 EPA incorrectly specified that CFV standards for light-duty vehicles and light-duty trucks shall be ''* * * tested in accordance with test procedures set forth in 40 CFR part 86 * * *.'' (In this same paragraph, EPA correctly specified that NMOG emissions are to be measured in accordance with the California Regulatory Requirements which were incorporated by reference in paragraph (k) of the same section.) Thus, EPA wishes to clarify that all CFV standards set forth in section 88.104–94 for light-duty vehicles and light-duty trucks shall be administered and enforced in accordance with California requirements by deleting paragraph (l) of section 88.104–94.

3. Corrections to Specifications for Emission Standards for Inherently Low-Emission Vehicle (ILEV)

In the regulations for the Clean-Fuel Vehicle final rulemaking, EPA specified in paragraph (c) of section 88.311–93 that exhaust emissions for ILEVs in light-duty vehicle and light-duty truck classes ''* * * shall be measured in accordance with the test procedures specified in § 88.104(l).'' As mentioned above in section I.E.2., EPA is deleting paragraph (l) in section 88.104–94. Thus, EPA today wishes to clarify that exhaust emissions for ILEVs in light-duty vehicle and light-duty truck classes shall be measured in accordance with test procedures specified in section 88.104–94(k) (California Regulatory Requirements). Thus, section 88.311–93(c) will be amended accordingly.

For heavy-duty ILEVs, EPA incorrectly specified in section 88.311–93(d) that exhaust emissions ''* * * shall be measured in accordance with the test procedures specified in § 88.105(d).'' However, paragraph (d) specifies only the exhaust standards but not the exhaust test procedures for heavy-duty ILEVs. The exhaust emission test procedures for ILEVs are specified in § 88.105(e). Thus, EPA today revises this section to require that the exhaust emissions for heavy-duty ILEVs be measured in accordance with the test procedures specified in § 88.105(e).

Further, in paragraph (d) of section 88.311–93, the requirements that heavy-duty (HD) ILEVs ''* * * have exhaust emissions with combined non-methane hydrocarbon and oxides of nitrogen * * * which do not exceed the exhaust emission standards * * * in § 88.105'' may be misleading. Not only are HD ILEVs required to meet exhaust emission standards in section 88.105(d) for combined non-methane hydrocarbon and oxides of nitrogen emissions, but HD ILEVs are also required to meet exhaust emission standards in section 88.105(d) for carbon monoxide, particulate matter, and formaldehyde emissions. Thus, EPA wishes to clarify that HD ILEVs shall have exhaust emissions which do not exceed any of the exhaust emission standards specified in section 88.105(d).

4. Correction to Clean Fuel Fleet Credit Table Applying When a Fleet Purchases More Clean-Fuel Vehicles Than Required

Due to an editorial error, in Table C94–1.1 of the regulations for the Clean Fuel Fleet Credit Program final rule (58 FR 11888, March 1, 1993) and the CFV Emission Standards final rule, the two vehicle-equivalent credits for ULEVs in the two heavy light-duty truck (HLDT) classes greater than 3,750 pounds ALVW were incorrectly specified as 1.29 and 1.47 respectively. For Table C94–1.1, EPA today corrects these values to 1.26 and 1.56, respectively.

Within this same table, EPA incorrectly specified in the last column heading for HLDTs greater than 5750 ALVW pounds that the ALVW parameter was ''K5750'' pounds. The ''K'' prefix added to 5750 pounds is an editorial error and may be misleading. EPA today changes the column heading to ''LDT >6000 GVWR, >5750 ALVW''.

5. Correction to Early Credits Requirements for Heavy Light-Duty Trucks in the CPP

In the regulations for the Credit Program for the CPP final rule, EPA incorrectly excluded heavy LDTs that meet CFV standards from being eligible for early credits during model years 1996 and 1997. (For the CPP, a manufacturer's share of required CFV annual sales for model years 1996 and 1997 is based on LDVs and light LDTs sales only; however, a manufacturer's share of required CFV annual sales beginning in 1998 is also based on heavy LDTs sales.) In the final rule, EPA allowed early credits for LDVs and all LDTs up to the beginning of CPP sales requirements in 1996. To provide heavy LDT manufacturers with a similar opportunity to earn early credits, EPA had intended to allow manufacturers to earn early credits for heavy LDTs up to the beginning of their sales requirements in 1998. Thus, to rectify this inconsistency for heavy LDTs in the CPP, EPA wishes to clarify that heavy LDTs certified to CFV standards shall be eligible for early credits up to model year 1998. Today's action changes section 88.205(g) of the regulations accordingly.

II. Environmental and Economic Impacts

The nature of today's provisions for the determination of assigned deterioration factors for alternative fuel vehicles are such that no impact on air quality should result. If and when an entity (converter or original equipment manufacturer) certifies an alternative fuel vehicle, these actions will not seriously compromise EPA's confidence that certified emission levels are being met in use. While some loss of control could theoretically occur if the reduced durability demonstration were in serious error, the Agency does not believe that this is likely to be common and in any event the numbers of vehicles involved is not large in comparison to conventional vehicle production. In addition, these provisions should significantly reduce the cost of certifying an alternative fuel engine family, thus encouraging the development of such vehicles.

For the relaxed ILEV labelling requirements, EPA believes that if the smaller but distinctive ILEV labels are used on an ILEV, they will still be able to be clearly identified by law enforcement officials. EPA expects that these changes will help encourage manufacturers to develop and produce ILEVs, which will in turn have a positive environmental impact relative to conventional vehicles.

With these changes to the CPP, EPA will ease the certification burden for manufacturers with no effect on air quality. This result will occur because the same number of vehicles will be sold under the CPP industry-wide; only the relative allocations among manufacturers might change.

In today's rule, EPA will reduce the regulatory burden on industry without effecting air quality. EPA believes this rule is highly accommodating to industry's concerns.

III. Public Participation

EPA believes the provisions of today's action are non-controversial and will make the affected provisions less burdensome and more effective. Nonetheless, if public comments are to be submitted, the Agency requests wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters should provide specific suggestions for any changes to any

aspect of the regulations that they believe need to be modified or improved. All comments should be directed to EPA Air Docket, Docket No. A–92–30 and A–92–14 for the certification flexibility provisions and Docket No. A–92–69 for the CPP provisions (See **ADDRESSES**). The official comment period will last for 30 days following publication of this direct final rule.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

IV. Statutory Authority

The statutory authority for this action is granted by Sections 202, 203, 206, 207, 241, 242, 243, 244, 245, 246, 247, 249, and 301(a) of the Clean Air Act.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA believes that this action is not a ''significant regulatory action'' within the meaning of the Executive Order. Today's action provides greater flexibility in the certification process for manufacturers of alternate fuel vehicles, thus eliminating some of the certification burden. ILEV labelling requirements have been relaxed, reducing some of the certification burden. Today's action also reduces the certification burden for manufactures required to produce CFVs under the CPP, by providing more flexibility in CFV production planning and credit reporting.

VI. Compliance with Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of federal regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of ''small entity'', ''significant impact'', or ''substantial number'', EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[6] Section 604 of the Regulatory Flexibility Act requires EPA to prepare a Regulatory Flexibility Analysis when the Agency determines that there is a significant adverse impact on a substantial number of small entities.

Today's action will provide regulatory flexibility to converters of alternative fuel vehicles in the determination of assigned deterioration factors. EPA has evaluated the effects of today's regulations and the Administrator of EPA certifies that there will not be an adverse impact on a substantial number of small entities; in fact, most small converters of alternative fuel vehicles will experience an economic benefit. Therefore, a Regulatory Flexibility Analysis has not been performed for this rule.

VII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million. EPA has determined that this rule will reduce the regulatory burden imposed on certifiers of clean-fuel and/or alternative fuel vehicles (especially converters of such vehicles). EPA has determined that an unfunded mandates statement therefore is unnecessary.

VIII. Paperwork Reduction Act

Today's rule does not add any mandatory information collection requirements for certifiers of alternative fuel vehicles or any other entity, and EPA has not prepared an Information Collection Request document for this rule.

The information collection requirements of the Credit Program for California Pilot Test Program have been amended to reflect today's relaxation of the credit reporting requirements. These amended requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060–0229. A copy of the Information Collection Request document (ICR No. 1590) may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136); 401 M St. S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Send comments regarding this collection of information to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M. St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

[6] U.S. Environmental Protection Agency Memorandum to Assistant Administrators, ''Compliance With the Regulatory Flexibility Act'', EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, ''Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act'', EPA Office of Policy, Planning, and Evaluation, 1992.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 88

Environmental protection, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 27, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 and 88 of title 40 of the Code of Federal Regulations are amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.094–14 of subpart A is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 86.094–14 Small-volume manufacturers certification procedures.

(a)(1) * * *

(2) To satisfy the durability data requirements of the small-volume manufacturers certification procedures, manufacturers of vehicles (or engines) as described in paragraph (b) of this section may use assigned deterioration factors that the Administrator determines by methods described in paragraph (c)(7)(i)(C) of this section. However, if no deterioration factor data (either the manufacturer's or industry-wide deterioration factor data) are available from previously completed durability data vehicles or engines used for certification, manufacturers of vehicles (or engines) as described in paragraph (b) of this section or with new technology not previously certified may use assigned deterioration factors that the Administrator determines by alternative methods, based on good engineering judgement. The factors that the Administrator determines by alternative methods will be published in an advisory letter or advisory circular.

* * * * *

§ 86.1311–94 [Amended]

3. Section 86.1311–94 of subpart N is amended by redesignating paragraph (b)(2)(iii) as paragraph (b)(3) preceding figure N94–1.

PART 88—CLEAN-FUEL VEHICLES

4. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, and 7601(a).

5. In § 88.104–94, paragraph (l), which precedes the tables to the section, is removed.

5a. A center heading is added immediately preceding the tables to the section to read as follows:

Tables to § 88.104–94

6. Section 88.204–94 of subpart B is amended by revising the introductory text of paragraph (c)(2) and paragraph (c)(2)(ii) to read as follows:

§ 88.204–94 Sales requirements for the California Pilot Test Program.

* * * * *

(c) * * *

(2) The required annual clean fuel vehicle sales volume for a given manufacturer is expressed in the following equation rounded to the nearest whole number:

$$\mathrm{RMS} = \frac{\mathrm{MS}}{\mathrm{TS}} \times \mathrm{TCPPS}$$

Where:

RMS=a manufacturer's required sales in a given model year.

MS=the average of a manufacturer's total LDV and light LDT sales in California three and four model years earlier than year in question (for MY 1996 and 1997 RMS calculations).

=the average of a manufacturer's total LDV and LDT sales in California three and four model years earlier than year in question (for MY 1998 and later RMS calculations).

TS=the average of total LDV and light LDT sales in California of all manufacturers three and four model years earlier than the year in question (for MY 1996 and 1997 RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

=the average of total LDV and LDT sales in California of all manufacturers three and four model years earlier than the year in question (for MY 1998 and later RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

TCPPS=Pilot program annual CFV sales requirement (either 150,000 or 300,000) for the model year in question.

(i) * * *

(ii) A manufacturer certifying for the first time in California shall calculate annual required sales share based on projected California sales for the model year in question. In the second year, the manufacturer shall use actual sales from the previous year. In the third year, the manufacturer will use sales from two model years prior to the year in question. In the fourth year, the manufacturer will use sales from three years prior to the year in question. In the fifth year and subsequent years, the manufacturer will use average sales from three and four years prior to the year in question.

* * * * *

7. Section 88.205–94 of subpart B is amended by revising paragraphs (d)(1), (d)(3)(iii), and (g) to read as follows:

§ 88.205–94 California Pilot Test Program Credits Program.

* * * * *

(d) * * *

(1) During certification, the manufacturer shall calculate the projected credits, if any, based on required sales projections.

* * * * *

(3) * * *

(iii) Maintain the records required under this subpart.

* * * * *

(g) *Early credits*. Beginning in model year 1992 appropriate credits, as determined from the given credit table, will be given for the sale of vehicles certified to the clean-fuel vehicle standards for TLEVs, LEVs, ULEVs, and ZEVs, where appropriate. For LDVs and light LDTs (<6000 lbs GVWR), early credits can be earned from model year 1992 to the beginning of the Pilot Program sales requirements in 1996. For heavy LDTs (>6000 lbs GVWR), early credits can be earned from model years 1992 through 1997. The actual calculation of early credits shall not begin until model year 1996.

8. Section 88.311–93 of subpart C is amended by revising paragraphs (c) and (d) to read as follows:

§ 88.311–93 Emissions standards for Inherently Low-Emission Vehicles.

* * * * *

(c) *Light-duty vehicles and light-duty trucks.* ILEVs in LDV and LDT classes shall have exhaust emissions which do not exceed the LEV exhaust emission standards for NMOG, CO, HCHO, and PM and the ULEV exhaust emission standards for NO_x listed in Tables A104–1 through A104–6 for light-duty CFVs. Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.104–94(k).

An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels on which it can operate. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquified petroleum gas-fueled LDVs/LDTs of the same vehicle class and model year.

(d) *Heavy-duty vehicles.* ILEVs in the HDV class shall have exhaust emissions which do not exceed the exhaust emission standards in grams per brake horsepower-hour listed in § 88.105–94(d). Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.105–94(e). An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels on which it can operate. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable in the case of conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquified petroleum gas-fueled HDVs of the same weight class and model year.

* * * * *

9. Section 88.312–93 of subpart C is amended by revising paragraphs (a)(1) and (c)(2)(ii) to read as follows:

§ 88.312–93 Inherently Low-Emission Vehicle Labeling.

* * * * *

(a) *Label design.* (1) Label design shall consist of either of the following specifications:

(i) The label shall consist of a white rectangular background, approximately 12 inches (30 centimeters) high by 18 inches (45 centimeters) wide, with ''CLEAN AIR VEHICLE'' printed in contrasting block capital letters at least 4.3 inches (10.6 centimeters) tall and 1.8 inches (4.4 centimeters) wide with a stroke width not less than 0.5 inches (1.3 centimeters). In addition, the words ''INHERENTLY LOW-EMISSION VEHICLE'' must be present in lettering no smaller than 1 inch (2.5 centimeters) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number; or

(ii) The label shall consist of a white truncated-circular background, approximately 10 inches (25 centimeters) in diameter by 7 inches (17.5 centimeters) in height. The bottom edge of the truncated-circular background shall be approximately 2 inches (5 centimeters) from the center. The acronym ''ILEV'' shall be printed on the label in contrasting block capital letters at least 2 inches (5 centimeters) tall and 1.5 inches (3.8 centimeters) wide with a stroke width not less than 0.4 inches (1.0 centimeter). In addition, the words ''CLEAN AIR VEHICLE'' must be present in lettering no smaller than 0.8 inches (2.0 centimeters) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number.

* * * * *

(c) * * *

(2) * * *

(ii) In the case that an ILEV label of the proportions specified in paragraph (a)(1) of this section cannot be attached to the rear of the ILEV, the manufacturer or the manufacturer's agent shall attach to the rear of the vehicle an ILEV label of either of the following proportions:

(A) The label shall consist of a white rectangular background, approximately 4 inches (10 centimeters) high by 24 inches (60 centimeters) wide, with ''CLEAN AIR VEHICLE'' printed in contrasting block capital letters at least 2.8 inches (7 centimeters) tall and 1.3 inches (3.3 centimeters) wide with a stroke width not less than 0.3 inches (0.8 centimeter). In addition, the words ''INHERENTLY LOW-EMISSION VEHICLE'' must be present in lettering no smaller than 0.6 inches (1.5 centimeters) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number; or

(B) The label shall consist of a white truncated-circular background, approximately 5 inches (12.5 centimeters) in diameter by 3.5 inches (8.8 centimeters) in height. The bottom edge of the truncated-circular background shall be approximately 1 inch (2.5 centimeters) from the center. The acronym ''ILEV'' shall be printed on the label in contrasting block capital letters at least 1 inch (2.5 centimeters) tall and 0.8 inches (2.0 centimeters) wide with a stroke width not less than 0.3 inches (0.8 centimeters). In addition, the words ''CLEAN AIR VEHICLE'' must be present in lettering no smaller than 0.4 inches (1.0 centimeter) high. Nothing shall be added to the label which impairs readability. Labels shall include a serialized identification number.

* * * * *

10. Table C94–1.1 to subpart C of part 88 is revised to read as follows:

Tables to Subpart C of Part 88

TABLE C94–1.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMOG. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–1.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

* * * * *

[FR Doc. 96–103 Filed 1–2–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 88

[AMS–FRL–5347–1]

Conversions Sales Volume Limit Provisions for Small Volume Manufacturers Certification of the Final Rule Entitled ''Emission Standards for Clean Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; removal of direct final rule provision.

SUMMARY: On September 30, 1994 (59 FR 50042), EPA published the final rule establishing emission standards for clean-fuel vehicles (CFVs) and engines and requirements for CFV conversions. As a part of this final rule, EPA published a direct final rulemaking (DFRM) intended to apply a 10,000 vehicle sales volume limit (EPA's current Small-Volume Manufacturers Certification Program limit) to vehicle converters seeking to certify their conversion configurations as CFVs under EPA's Small-Volume Certification Program. EPA is removing this provision because adverse or critical comments were received by the Agency prior to October 31, 1994 (the published deadline for submitting comments).

EFFECTIVE DATE: This action is effective January 3, 1996.

ADDRESSES: Materials directly relevant to the direct final rule are contained in Public Docket A–92–30 located at: Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. The docket may be inspected from 8 a.m. until 4 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA (SRPB–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7832.

SUPPLEMENTARY INFORMATION:

I. Accessing Electronic Copies of Rulemaking Documents through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this action is available through TTNBBS under OMS, Rulemaking and Reporting, Alternative Fuels, Clean Fuel Fleets. TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

II. Description of Action

The Clean Air Act requires EPA to establish, by regulation, emission standards for clean-fuel vehicles (CFVs) pursuant to sections 242 and 243 of the Act. On September 30, 1994, EPA promulgated such emissions standards for all CFVs, including vehicles converted from conventional vehicles to CFVs. *See* 59 FR 50042. That rulemaking included a regulatory provision that adopted a sales volume limit of 10,000 converted vehicles for converters seeking to certify as small volume manufacturers. The Small-Volume Manufacturers certification program exempts manufacturers with annual sales of 10,000 or less from EPA's full certification program. EPA had intended to implement the 10,000 limit for CFV conversion certification under the small-volume manufacturers provisions to make the treatment of CFVs consistent with that of other conventional and alternative-fueled vehicles. A discussion of EPA's perspective on this regulatory provision was presented in Section II, Part B of the Clean Fuel Vehicle Conversions Final Rule. *See* 59 FR 50063–50064 (September 30, 1994).

EPA did not include this sales volume limit in its proposed clean-fuel vehicle regulations (*See* 58 FR 32474, June 10, 1993). EPA promulgated this provision in the final rule establishing the CFV standards through a direct final rulemaking process, because the Agency considered it a noncontroversial action and did not anticipate adverse comment. However, EPA did receive adverse comment during the comment period provided for the sales volume limit. Specifically, the Natural Gas Vehicle Coalition (NGVC) commented that certification is more burdensome for conversion companies compared to Original Equipment Manufacturers (OEMs) since the relative costs of the end products of the two types of business are very different and the opportunity to recover certification costs by increasing product prices is much more limited for converters. Since adverse comments were received on this direct final action, EPA is removing the volume limit for converters seeking to use the provisions for small-volume manufacturers. In another document elsewhere in this Federal Register, EPA is proposing to adopt this volume limit for application of small volume manufacturer provisions to certification of CFV conversions. Interested parties should refer to the ''Proposed Rules'' section of this Federal Register for that proposal.

EPA's removal of these regulatory changes is not based on EPA's agreement or disagreement with the adverse comments received. The removal is based solely on the receipt of the comment itself. As stated in the September 30, 1994, rule, the sales volume limit would be effective only if no persons submitted adverse comments or requested an opportunity to comment. Section 88.306–94(b)(3) is being revised for purposes of removing the direct final rule provisions. In addition to removing the volume limit in this action, EPA is proposing new provisions regarding the vehicle volume limit for converters seeking certification under the small volume manufacturers provisions in a document elsewhere in this Federal Register.

III. Statutory Authority

The statutory authority for this action is granted to EPA by Sections 202, 203, 247, and 301 of the Clean Air Act.

List of Subjects in 40 CFR Part 88

Environmental protection, Administrative practice and procedure, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 27, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble part 88 of title 40 of the Code of Federal Regulations is amended as follows:

PART 88—CLEAN-FUEL VEHICLES

1. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

2. Section 88.306–94 of subpart C is amended by revising paragraph (b)(3) to read as follows:

§ 88.306–94 Requirements for a converted vehicle to qualify as a clean-fuel fleet vehicle.

* * * * *

(b) * * *

(3) For the purpose of determining whether certification under the Small-Volume Manufacturers Certification Program pursuant to the requirements of 40 CFR 86.094–14 is permitted, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) is waived for a certifier

of a clean-fuel vehicle aftermarket conversion.

* * * * *

[FR Doc. 96–102 Filed 1–2–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Uruguay Round (1996 Agreement)

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the DoD-unique requirements of the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round), which becomes effective January 1, 1996. This agreement is implemented in statute by the Uruguay Round Agreement Act, Pub. L. 103–465, which amends the Trade Agreements Act of 1979.

DATES: *Effective date:* January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 225.402 and 252.225–7007, permitting purchase of nondesignated country end products, if sufficient U.S. made, qualifying country, or eligible products are not available. This implements Section 343 of Pub. L. 103–465, which amends Section 302(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(a)).

A proposed rule was published in the Federal Register on October 13, 1995 (60 FR 53319). No comments were received in response to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it permits purchase of nondesignated country end products without a waiver only if sufficient U.S. made, qualifying country, or eligible products are not available.

C. Paperwork Reduction Act

The final rule does not impose any reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.402 is amended by revising paragraph (c) to read as follows:

225.402 Policy.

(a) * * *

(c)(i) Except as provided in paragraphs (c) (ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872–1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under Section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii) (A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7007 is amended by revising the clause date to read ''(JAN 1996)'' and by revising paragraph (c)(1) to read as follows:

252.225–7007 Trade Agreements.

* * * * *

Trade Agreements (Jan 1996)

* * * * *

(c) * * *

(1) Offerors may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(iii) A national interest waiver has been granted under Section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

* * * * *

[FR Doc. 96–3 Filed 1–2–96; 8:45 am]

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Vol. 61, No. 2

Wednesday, January 3, 1996

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FEDERAL REGISTER PAGES AND DATES, JANUARY

1–98.....2
99–246.....3

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12944 (Superseded by EO 12984).....235
12984.....235

5 CFR

1201.....1

7 CFR

928.....99
989.....100
997.....102
1773.....104
Proposed Rules:
930.....21
1789.....21

10 CFR

50.....232
Proposed Rules:
26.....27

12 CFR

707.....114

14 CFR

23.....1
35.....114
39.....116
71.....3, 120, 121, 232
73.....4
Proposed Rules:
39.....131, 133, 134

21 CFR

573.....5

26 CFR

1.....6
602.....6
Proposed Rules:
1.....28

28 CFR

540.....90
542.....86
545.....90
Proposed Rules:
540.....92
545.....92

33 CFR

Ch. 1.....8
81.....8
Proposed Rules:
165.....136
207.....33

40 CFR

86.....122
88.....122, 129
Proposed Rules:
85.....140
86.....140
88.....140

41 CFR

201–1.....10
201–2.....10
201–3.....10
201–4.....10
201–6.....10
201–7.....10
201–17.....10
201–18.....10
201–20.....10
201–21.....10
201–22.....10
201–24.....10
201–39.....10

48 CFR

225.....130
252.....130
Proposed Rules:
31.....234

49 CFR

Proposed Rules:
553.....145

50 CFR

222.....17
227.....17
641.....17
675.....20
Proposed Rules:
17.....35

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Beef promotion and research:
Cattlemen's Beef Promotion and Research Board; changes in cattle inventories and cattle and beef imports;

reapportionment; published 12-4-95

Raisins produced from grapes grown in California; published 1-3-96

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

RUS borrowers; audit policy and certified public accountant requirements; published 1-3-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Clean-fuel vehicles and engines emission standards, conversion requirements, and California pilot text program; small-volume manufacturers certification

program conversion sales volume limit provision removed; published 1-3-96

Clean Air Act:

State operating permits programs--

Delaware; published 12-4-95

GOVERNMENT ETHICS OFFICE

Conflict of interests; published 12-27-95

INTERIOR DEPARTMENT

Native American Graves Protection and Repatriation Act; implementation; published 12-4-95

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems--

Booster seat safety; published 12-12-95

Comments Due Next Week

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Okra (frozen); grade standards; comments due by 1-8-96; published 12-7-95

Onions grown in--

Texas; comments due by 1-11-96; published 12-12-95

Peas, field and black-eye (frozen); grade standards; comments due by 1-8-96; published 12-7-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Bering Sea and Aleutian Islands groundfish; comments due by 1-10-96; published 12-11-95

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Futures commission merchants; minimum financial requirements, subordinated debt prepayment, and gross collection of exchange-set margin for omnibus accounts; comments due by 1-12-96; published 12-13-95

DEFENSE DEPARTMENT

Acquisition regulations:

Ground and aircraft flight risk; comments due by 1-12-96; published 11-13-95

Multiyear contracting and other miscellaneous provisions; comments due by 1-12-96; published 11-13-95

Federal Acquisition Regulation (FAR):

Contingent fee representation; comments due by 1-12-96; published 11-13-95

Employee stock ownership plans; comments due by 1-8-96; published 11-7-95

EDUCATION DEPARTMENT

Postsecondary education:

Student support services program; clarification and simplification; comments due by 1-12-96; published 12-13-95

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Outer Continental Shelf; gas pipeline facilities and services; agency's jurisdiction; comments due by 1-12-96; published 12-11-95

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc.; comments due by 1-12-96; published 12-13-95

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 1-12-96; published 12-13-95

South Carolina; comments due by 1-10-96; published 12-11-95

Washington; comments due by 1-8-96; published 12-8-95

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Florida; comments due by 1-8-96; published 12-7-95

New Jersey; comments due by 1-8-96; published 12-7-95

Clean Air Act:

State operating permits programs--

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

Hazardous waste:

Military munitions rule; explosives emergencies; redefinition of on-site; comments due by 1-8-96; published 11-8-95

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Imidacloprid; comments due by 1-12-96; published 12-13-95

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 1-11-96; published 12-20-95

Toxic substances:

Significant new uses--

Ethane, 1,1,1,2,2-pentafluoro-; comments due by 1-12-96; published 12-13-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Hearing aid compatible wireline telephones in workplaces, confined settings, etc.; comments due by 1-12-96; published 12-12-95

Radio stations; table of assignments:

Maine; comments due by 1-8-96; published 12-4-95

Television broadcasting:

Cable Television Consumer Protection and Competition Act of 1992--

Rate regulation; comments due by 1-12-96; published 12-11-95

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance programs:

Insurance coverage and rates; comments due by 1-8-96; published 11-9-95

FEDERAL RESERVE SYSTEM

Transactions with affiliates; conformity of capital stock and surplus definition to unimpaired capital stock and surplus definition, etc.; comments due by 1-8-96; published 12-4-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Medical device user facilities and manufacturers; adverse events reporting; certification and registration; comments due by 1-10-96; published 12-11-95

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Indian lands program:

Abandoned mine land reclamation plan--

Hopi Tribe; comments due by 1-8-96; published 12-7-95

Permanent program and abandoned mine land reclamation plan submissions:

Colorado; comments due by 1-8-96; published 12-7-95

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:

Respiratory protection; comments due by 1-8-96; published 11-7-95

PERSONNEL MANAGEMENT OFFICE

Federal claims collection:

Claims collections standards; delegation of authority; comments due

by 1-8-96; published 11-9-95

POSTAL RATE COMMISSION

Practice and procedure rules:

Rate and classification changes; expedition, flexibility, and innovation; comments due by 1-8-96; published 12-18-95

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

Louisiana; comments due by 1-12-96; published 11-13-95

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78)

Comment request; comments due by 1-12-96; published 11-13-95

Ports and waterways safety:

Boon Island, ME; sunken vessel M/V EMPIRE KNIGHT; safety zone; comments due by 1-12-96; published 11-13-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

de Havilland; comments due by 1-12-96; published 11-14-95

Airbus; comments due by 1-8-96; published 11-9-95

British Aerospace; comments due by 1-12-96; published 11-13-95

Fokker; comments due by 1-8-96; published 11-28-95

Hamilton; comments due by 1-8-96; published 11-8-95

Teledyne Continental Motors; comments due by 1-12-96; published 11-13-95

Airworthiness standards:

Special conditions--

Beech model 200 airplane, etc.; comments due by 1-8-96; published 12-7-95

Class E airspace; comments due by 1-8-96; published 12-1-95

Rulemaking petitions; summary and disposition; comments due by 1-8-96; published 11-8-95

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Emergency relief program; comments due by 1-12-96; published 11-13-95

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems--

Booster seat safety; comments due by 1-11-96; published 12-12-95

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. 395/P.L. 104–75

To designate the United States courthouse and Federal building to be constructed at the southeastern corner of Liberty and South Virginia Streets in Reno, Nevada, as the ''Bruce R. Thompson United States Courthouse and Federal Building''. (Dec. 28, 1995; 109 Stat. 786)

H.R. 660/P.L. 104–76

Housing for Older Persons Act of 1995 (Dec. 28, 1995; 109 Stat. 787)

H.R. 965/P.L. 104–77

To designate the Federal building located at 600 Martin Luther King, Jr. Place in Louisville, Kentucky, as the ''Romano L. Mazzoli Federal Building''. (Dec. 28, 1995; 109 Stat. 789)

H.R. 1253/P.L. 104–78

To rename the San Francisco Bay National Wildlife Refuge as the Don Edwards San Francisco Bay National Wildlife Refuge. (Dec. 28, 1995; 109 Stat. 790)

H.R. 2527/P.L. 104–79

To amend the Federal Election Campaign Act of 1971 to improve the electoral process by permitting electronic filing and preservation of Federal Election Commission reports, and for other purposes. (Dec. 28, 1995; 109 Stat. 791)

H.R. 2547/P.L. 104–80

To designate the United States courthouse located at 800 Market Street in Knoxville, Tennessee, as the ''Howard H. Baker, Jr. United States Courthouse''. (Dec. 28, 1995; 109 Stat. 794)

H.J. Res. 69/P.L. 104–81

Providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 28, 1995; 109 Stat. 795)

H.J. Res. 110/P.L. 104–82

Providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 28, 1995; 109 Stat. 796)

H.J. Res. 111/P.L. 104–83

Providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 28, 1995; 109 Stat. 797)

H.J. Res. 112/P.L. 104–84

Providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 28, 1995; 109 Stat. 798)

S. 369/P.L. 104–85

To designate the Federal Courthouse in Decatur, Alabama, as the ''Seybourn H. Lynne Federal Courthouse'', and for other purposes. (Dec. 28, 1995; 109 Stat. 799)

S. 965/P.L. 104–86

To designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the Albert V. Bryan United States Courthouse. (Dec. 28, 1995; 109 Stat. 800)

H.R. 1878/P.L. 104–87

To extend for 4 years the period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton Area Health Plan. (Dec. 29, 1995; 109 Stat. 802)

H.R. 2539/P.L. 104–88

ICC Termination Act of 1995 (Dec. 29, 1995; 109 Stat. 803)

Last List December 28, 1995