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Rules and Regulations

Federal Register
Vol. 62, No. 179
Tuesday, September 16, 1997

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure for original jurisdiction cases to permit assignment of certain of these cases to a judge other than the Administrative Law Judge, to provide for delegation of authority to the Administrative Law Judge to decide Special Counsel stay requests, and to provide for judges to issue initial decisions, rather than recommended decisions, in Special Counsel complaints (including alleged violations of the Hatch Act) and proposed actions against administrative law judges. Certain other changes are made to reorganize and update the rules governing adjudication of original jurisdiction cases for the benefit of the Board's customers. These changes are the result of a recommendation made by the Board's Reinventing Government II (REGO II) Task Force and a review by the Board of its delegations of authority to decide original jurisdiction cases. They are intended to streamline the Board's adjudicatory procedures so that it can manage its original jurisdiction caseload more efficiently and effectively.

DATES: Effective date September 16, 1997. Submit written comments on or before November 17, 1997.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: In response to the second phase of the Administration's Reinventing Government initiative (REGO II), the Chairman of the Merit Systems Protection Board appointed a REGO II Task Force to review all Board operations and to make recommendations for changes in organization, functions, and procedures that would enable the agency to continue performing its functions effectively at the reduced budget and staffing levels expected through fiscal year 2000. One recommendation of the Task Force with respect to the Board's adjudicatory function, subsequently approved by the Board, was that the regulations for original jurisdiction cases be amended to permit the issuance of an initial decision in Special Counsel complaints and proposed actions against administrative law judges, subject to a petition for review of the initial decision by the Board.

The Board also reviewed its delegations of authority to decide original jurisdiction cases and determined that it should have the flexibility to assign to any of its judges those cases that are not required by law to be heard by an administrative law judge. In addition to making these changes, which are intended to enable the Board to manage its caseload more efficiently and effectively, the Board is taking this opportunity to reorganize and update its original jurisdiction regulations for the benefit of its customers.

This amendment to 5 CFR part 1201 revises the Board's procedures for the adjudication of original jurisdiction cases set forth in subpart D. The following are the principal changes:

(a) Subpart D has been reorganized so that, following an introductory section, there are separate, self-contained provisions setting forth the procedures for each kind of original jurisdiction case covered by the subpart. The introductory section, 1201.121, sets forth the jurisdictional scope of subpart D and the applicability of other subparts of part 1201. The procedures for each kind of original jurisdiction case then are set forth in the following sections: 1201.122 through 1201.127 for Special Counsel disciplinary action complaints (including Hatch Act cases), 1201.128 through 1201.133 for Special Counsel corrective action complaints, 1201.134 through 1201.136 for Special Counsel stay requests, 1201.137 through 1201.142 for actions against administrative law judges, and 1201.143 through 1201.145 for informal hearings in proposed removals of career appointees from the Senior Executive Service for performance reasons. For each kind of case, the sections have been rearranged to follow the chronology of a case as it proceeds through filing of the complaint or request, answer, adjudication, decision, and review (if any). The provisions on protective orders are moved to the end of the subpart, §§ 1201.146 through 1201.148, and are revised to clarify that protective orders may be issued in connection with any pending original jurisdiction proceeding, as well as during the course of an investigation by the Special Counsel.

(b) The provisions on assignment of cases to an administrative law judge for hearing (formerly in §§ 1201.129 and 1201.135) have been replaced by new provisions in §§ 1201.125 and 1201.140 stating that Special Counsel disciplinary action complaints (including Hatch Act cases) and proposed agency actions against administrative law judges will be heard by an administrative law judge. Because a hearing before an administrative law judge is required by law in these kinds of cases (see 5 U.S.C. 1215(a)(2)(C) and 5 U.S.C. 554(a)(2)), all such cases will continue to be assigned to the Board's Administrative Law Judge at headquarters. New provisions have been added at §§ 1201.131 and 1201.144 to provide the Board flexibility to assign Special Counsel corrective action complaints and Senior Executive Service performance-based removal cases to any of its judges, as defined at § 1201.4(a). That section defines ''judge'' as: ''Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an attorney-examiner, an administrative judge, an administrative law judge, the Board, or any member of the Board.'' Under these new provisions, therefore, a Special Counsel corrective action complaint or a Senior Executive Service performance-based removal case can be assigned to a judge in one of the Board's regional or field offices or to a judge

(including an administrative law judge) at the Board's headquarters.

(c) The provisions for Special Counsel requests for stays of personnel actions have been revised to provide that any member of the Board may delegate to an administrative law judge the authority to decide an initial stay request. See § 1201.134.

(d) The provisions on filing Special Counsel corrective action complaints and Senior Executive Service performance-based removal cases have been revised to require that subsequent pleadings be filed with the office where the judge to whom the case is assigned is located. See §§ 1201.128 and 1201.143. When a case is assigned to a judge in a regional or field office, an acknowledgment order will be issued directing that subsequent pleadings be filed with the office where the judge is located.

(e) The provisions on filing original jurisdiction cases have been revised to require that telephone and facsimile numbers, as well as names and addresses, be provided on a certificate of service. See §§ 1201.122, 1201.128, 1201.134, 1201.137, and 1201.143.

(f) The provisions on serving copies of initial complaints and requests in original jurisdiction cases have been revised to require that service be accomplished by the filer—the Special Counsel, the agency proposing an action against an administrative law judge, or the career appointee in the Senior Executive Service who is requesting an informal hearing. See §§ 1201.122, 1201.128, 1201.134, 1201.137, and 1201.143. Previously, service in original jurisdiction cases was accomplished by the Clerk of the Board (see former § 1201.122(b)). The provisions on serving copies of subsequent pleadings are unchanged.

(g) New provisions have been added to require the Clerk of the Board to furnish a copy of the applicable Board regulations to each respondent (other than a Federal, State, or local government agency) named in a Special Counsel disciplinary action complaint or a proposed agency action against an administrative law judge. Furthermore, the Clerk must advise each respondent of his or her procedural rights and the Board's requirements regarding the time limit for filing a response to the complaint and the content of the response. See §§ 1201.124 and 1201.139.

(h) The provision on contents of a Special Counsel disciplinary action complaint, § 1201.123, has been revised to describe more specifically the prohibited conduct and violations of law that can form the basis for a disciplinary action complaint, and to eliminate an obsolete provision. As revised, the provision states that a disciplinary action may be brought against an employee alleged to have committed a prohibited personnel practice, to have committed a violation described in 5 U.S.C. 1216, to have violated the Hatch Act prohibitions applicable to State and local government employees under 5 U.S.C. 1505, or to have knowingly and willfully refused or failed to comply with an order of the Board. The reference to the Federal Employees Flexible and Compressed Work Schedule Act (formerly at § 1201.123(a)(4)) has been deleted as no longer necessary. A corresponding revision has been made in § 1201.126 to delete the provisions regarding discipline the Board can impose under the Federal Employees Flexible and Compressed Work Schedule Act (formerly at § 1201.126(e)).

(i) A new provision has been added that provides any person on whose behalf the Special Counsel brings a corrective action complaint the right to request intervention in the Board proceeding under the provisions of § 1201.34. The current language regarding the right of any person alleged to have been the subject of any prohibited personnel practice alleged in the complaint to make written comments is revised to clarify that this right applies regardless of whether such a person requests and is granted intervenor status. The current language regarding the rights of the Special Counsel, the agency involved, and the Office of Personnel Management to provide oral or written comments is unchanged. See § 1201.130.

(j) New provisions have been added permitting judges to issue initial decisions in Special Counsel corrective action complaints, Special Counsel disciplinary action complaints (with one exception, described in paragraph (k) below), and proposed agency actions against administrative law judges. Such initial decisions will be subject to a petition for review by the Board. See §§ 1201.125, 1201.131, and 1201.140. These provisions replace the procedure in the former § 1201.129, which provided for an administrative law judge to issue a recommended decision, subject to exceptions and a final decision by the Board.

(k) In a Hatch Act case involving a Federal or District of Columbia government employee, where an administrative law judge determines that removal of the employee is not warranted, he or she is without statutory authority to order a lesser penalty. The statute provides that the Board may impose a lesser penalty of not less than a 30-day suspension only if the Board finds ''by unanimous vote'' that the violation does not warrant removal. 5 U.S.C. 7325. Therefore, the regulations provide at § 1201.125(c) that in such a case, the administrative law judge will issue a recommended decision, subject to exceptions and a final decision by the Board. The procedures applying in this instance are the same as those under the former § 1201.129.

(l) A new provision has been added to state the statutory right (at 5 U.S.C. 1508) for an aggrieved party to obtain judicial review of a Board decision in a Hatch Act case involving a State or local government employee. See § 1201.127(b).

(m) In the provisions governing extension of a Special Counsel stay that has been granted, a new requirement has been added that the Special Counsel file any request for extension, along with its supporting brief, at least 15 days before the expiration date of the stay. A time limit of 10 days from the date of filing of the Special Counsel's brief is established for the filing of any agency response. See § 1201.136(b). These changes are intended to ensure that there is sufficient time to decide a request for extension of a stay before the expiration date of the stay.

(n) In the provisions governing extension of a Special Counsel stay that has been granted, the requirement that the Special Counsel provide periodic reports during the pendency of the stay (formerly at § 1201.127(c)(3)) has been deleted. In its place has been added a requirement, reflecting current Board practice, that the agency ordered to stay a personnel action provide evidence of compliance with the stay order within five working days of the date of the order. See § 1201.136(c).

(o) A new section has been added to the provisions on ''Actions Against Administrative Law Judges'' to cover the situation in which a complaint is filed by an administrative law judge rather than an agency. In this situation, the administrative law judge may allege that the employing agency has interfered with the judge's qualified decisional independence so as to constitute a constructive removal or other action under 5 U.S.C. 7521 that has not been authorized by the Board. See § 1201.142.

The revised procedures in subpart D will be applied to original jurisdiction cases that are: (1) Pending on the effective date of this interim rule, except for cases pending before the Board on a recommended decision of an administrative law judge; (2) remanded by the Board to a judge on or after the effective date of this interim rule; and

(3) filed on or after the effective date of this interim rule.

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Subpart D is revised to read as follows:

Subpart D—Procedures for Original Jurisdiction Cases

GENERAL

Subpart D—Procedures for Original Jurisdiction Cases

General

§ 1201.121 Scope of jurisdiction; application of subparts B, F, and H.

(a) *Scope.* The Board has original jurisdiction over complaints filed by the Special Counsel seeking corrective or disciplinary action (including complaints alleging a violation of the Hatch Political Activities Act), requests by the Special Counsel for stays of certain personnel actions, proposed agency actions against administrative law judges, and removals of career appointees from the Senior Executive Service for performance reasons.

(b) *Application of subparts B, F, and H.* (1) Except as otherwise expressly provided by this subpart, the regulations in subpart B of this part applicable to appellate case processing also apply to original jurisdiction cases processed under this subpart.

(2) Subpart F of this part applies to enforcement proceedings in connection with Special Counsel complaints and stay requests, and agency actions against administrative law judges, decided under this subpart.

(3) Subpart H of this part applies to requests for attorney fees or compensatory damages in connection with Special Counsel corrective and disciplinary action complaints, and agency actions against administrative law judges, decided under this subpart. Subpart H of this part also applies to requests for consequential damages in connection with Special Counsel corrective action complaints decided under this subpart.

Special Counsel Disciplinary Actions

§ 1201.122 Filing complaint; serving documents on parties.

(a) *Place of filing.* A Special Counsel complaint seeking disciplinary action under 5 U.S.C. 1215(a)(1) (including a complaint alleging a violation of the Hatch Political Activities Act) must be filed with the Clerk of the Board.

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service.

(c) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(d) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the Clerk of the Board. Service may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§ 1201.123 Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint in accordance with §1201.122 of this part, stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(1) Action to discipline an employee alleged to have committed a prohibited personnel practice, 5 U.S.C. 1215(a)(1)(A);

(2) Action to discipline an employee alleged to have violated any law, rule, or regulation, or to have engaged in prohibited conduct, within the jurisdiction of the Special Counsel under 5 U.S.C. 1216 (including an alleged violation by a Federal or District of Columbia government employee involving political activity prohibited under 5 U.S.C. 7324), 5 U.S.C. 1215(a)(1)(B), 1216(a), and 1216(c);

(3) Action to discipline a State or local government employee for an alleged violation involving prohibited political activity, 5 U.S.C. 1505; or

(4) Action to discipline an employee for an alleged knowing and willful refusal or failure to comply with an order of the Board, 5 U.S.C. 1215(a)(1)(C).

(b) The administrative law judge to whom the complaint is assigned may order the Special Counsel and the responding party to file briefs, memoranda, or both in any disciplinary action complaint the Special Counsel brings before the Board.

§1201.124 Rights; answer to complaint.

(a) *Responsibilities of Clerk of the Board.* The Clerk of the Board shall furnish a copy of the applicable Board

regulations to each party that is not a Federal, State, or local government agency and shall inform such a party of the party's rights under paragraph (b) of this section and the requirements regarding the timeliness and content of an answer to the Special Counsel's complaint under paragraphs (c) and (d), respectively, of this section.

(b) *Rights.* When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before an administrative law judge;

(4) To a written decision, issued at the earliest practicable date, in which the administrative law judge states the reasons for his or her decision; and

(5) To a copy of the administrative law judge's decision and subsequent final decision by the Board, if any.

(c) *Filing and default.* A party named in a Special Counsel disciplinary action complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a party fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§1201.125 Administrative law judge.

(a) An administrative law judge will hear a disciplinary action complaint brought by the Special Counsel.

(b) Except as provided in paragraph (c)(1) of this section, the administrative law judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557. The applicable provisions of §§ 1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

(c) (1) In a Special Counsel complaint seeking disciplinary action against a Federal or District of Columbia government employee for a violation of 5 U.S.C. 7324, where the administrative law judge finds that the violation does not warrant removal, the administrative law judge will issue a recommended decision to the Board in accordance with 5 U.S.C. 557.

(2) The parties may file with the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date of service of the recommended decision.

(3) The parties may file replies to exceptions within 25 days after the date of service of the exceptions, as that date is determined by the certificate of service.

(4) No additional evidence will be accepted with a party's exceptions or with a reply to exceptions unless the party submitting it shows that the evidence was not readily available before the administrative law judge closed the record.

(5) The Board will consider the recommended decision of the administrative law judge, together with any exceptions and replies to exceptions filed by the parties, and will issue a final written decision.

§1201.126 Final decisions.

(a) In any action to discipline an employee, except as provided in paragraphs (b) or (c) of this section, the administrative law judge, or the Board on petition for review, may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of civil penalty not to exceed $1,100. 5 U.S.C. 1215(a)(3).

(b) In any action in which the administrative law judge, or the Board on petition for review, finds under 5 U.S.C. 1505 that a State or local government employee has violated the Hatch Political Activities Act and that the employee's removal is warranted, the administrative law judge, or the Board on petition for review, will issue a written decision notifying the employing agency and the employee that the employee must be removed and not reappointed within 18 months of the date of the decision. If the agency fails to remove the employee, or if it reappoints the employee within 18 months, the administrative law judge, or the Board on petition for review, may order the Federal entity administering loans or grants to the agency to withhold funds from the agency as provided under 5 U.S.C. 1506.

(c) In any Hatch Act action in which the administrative law judge, or the Board on petition for review, finds that a Federal or District of Columbia government employee has violated 5 U.S.C. 7324 and that the violation warrants removal, the administrative law judge, or the Board on petition for review, will issue a written decision ordering the employee's removal. If the administrative law judge determines that removal is not warranted, the judge will issue a recommended decision under §1201.125(c)(1) of this part. If the Board finds by unanimous vote that the violation does not warrant removal, it will impose instead a penalty of not less than 30 days suspension without pay. If the Board finds by majority vote that the violation warrants removal, it will order the employee's removal.

§1201.127 Judicial review.

(a) An employee subject to a final Board decision imposing disciplinary action under 5 U.S.C. 1215 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit, except as provided under paragraph (b) of this section. 5 U.S.C. 1215(a)(4).

(b) A party aggrieved by a determination or order of the Board under 5 U.S.C. 1505 (governing alleged violations of the Hatch Political Activities Act by State or local government employees) may obtain judicial review in an appropriate United States district court. 5 U.S.C. 1508.

Special Counsel Corrective Actions

§1201.128 Filing complaint; serving documents on parties.

(a) *Place of filing.* A Special Counsel complaint seeking corrective action under 5 U.S.C. 1214 must be filed with the Clerk of the Board. After the complaint has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative, and each person on whose behalf the corrective action is brought. The Special Counsel must serve a copy of the complaint on the agency or its representative, and each person on whose behalf the corrective action is brought, as shown on the certificate of service.

(c) *Subsequent filings and service.* Each party must serve on every other

party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(d) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the office determined under paragraph (a) of this section. Service may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§1201.129 Contents of complaint.

(a) If the Special Counsel determines that the Board should take action to require an agency to correct a prohibited personnel practice (or a pattern of prohibited personnel practices) under 5 U.S.C. 1214(b)(4), he or she must file a written complaint in accordance with §1201.128 of this part, stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(b) If the Special Counsel files a corrective action with the Board on behalf of an employee, former employee, or applicant for employment who has sought corrective action from the Board directly under 5 U.S.C. 1214(a)(3), the Special Counsel must provide evidence that the employee, former employee, or applicant has consented to the Special Counsel's seeking corrective action. 5 U.S.C. 1214(a)(4).

(c) The judge to whom the complaint is assigned may order the Special Counsel and the respondent agency to file briefs, memoranda, or both in any corrective action complaint the Special Counsel brings before the Board.

§1201.130 Rights; answer to complaint.

(a) *Rights.* (1) A person on whose behalf the Special Counsel brings a corrective action has a right to request intervention in the proceeding in accordance with the regulations in §1201.34 of this part. The Clerk of the Board shall notify each such person of this right.

(2) When the Special Counsel files a complaint seeking corrective action, the judge to whom the complaint is assigned shall provide an opportunity for oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management. 5 U.S.C. 1214(b)(3)(A).

(3) The judge to whom the complaint is assigned shall provide a person alleged to have been the subject of any prohibited personnel practice alleged in the complaint the opportunity to make written comments, regardless of whether that person has requested and been granted intervenor status. 5 U.S.C. 1214(b)(3)(B).

(b) *Filing and default.* An agency named as respondent in a Special Counsel corrective action complaint may file an answer with the judge to whom the complaint is assigned within 35 days of the date of service of the complaint. If the agency fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the judge's decision.

(c) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent agency has no knowledge of a fact, it must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§1201.131 Judge.

(a) The Board will assign a corrective action complaint brought by the Special Counsel to a judge, as defined at § 1201.4(a) of this part, for hearing.

(b) The judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557. The applicable provisions of §§ 1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

§1201.132 Final decisions.

(a) In any Special Counsel complaint seeking corrective action based on an allegation that a prohibited personnel practice has been committed, the judge, or the Board on petition for review, may order appropriate corrective action. 5 U.S.C. 1214(b)(4)(A).

(b) (1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the judge, or the Board on petition for review, will order appropriate corrective action if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure. 5 U.S.C. 1214(b)(4)(B).

§1201.133 Judicial review.

An employee, former employee, or applicant for employment who is adversely affected by a final Board decision on a corrective action complaint brought by the Special Counsel may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1214(c).

Special Counsel Requests for Stays

§1201.134 Deciding official; filing stay request; serving documents on parties.

(a) *Request to stay personnel action.* Under 5 U.S.C. 1214(b)(1), the Special Counsel may seek to stay a personnel action if the Special Counsel determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(b) *Deciding official.* Any member of the Board may delegate to an administrative law judge the authority to decide a Special Counsel request for an initial stay.

(c) *Place of filing.* A Special Counsel stay request must be filed with the Clerk of the Board.

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(e) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(f) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the Clerk of the Board. Service may be by mail, by

facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§1201.135 Contents of stay request.

The Special Counsel, or that official's representative, must sign each stay request, and must include the following information in the request:

(a) The names of the parties;

(b) The agency and officials involved;

(c) The nature of the action to be stayed;

(d) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and

(e) The laws or regulations that were violated, or that will be violated if the stay is not issued.

§1201.136 Action on stay request.

(a) *Initial stay.* A Special Counsel request for an initial stay of 45 days will be granted within three working days after the filing of the request, unless, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is denied within the 3-day period, it is considered granted by operation of law.

(b) *Extension of stay.* Upon the Special Counsel's request, a stay granted under 5 U.S.C. 1214(b)(1)(A) may be extended for an appropriate period of time, but only after providing the agency with an opportunity to comment on the request. The Special Counsel must file any request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B) at least 15 days before the expiration date of the stay. A brief describing the facts and any relevant legal authority that should be considered must accompany the request for extension. Any response by the agency must be filed within 10 days of the date of service of the Special Counsel's brief.

(c) *Evidence of compliance with a stay.* Within five working days from the date of a stay order or an order extending a stay, the agency ordered to stay a personnel action must file evidence setting forth facts and circumstances demonstrating compliance with the order.

(d) *Termination of stay.* A stay may be terminated at any time, except that a stay may not be terminated:

(1) On the motion of an agency, or on the deciding official's own motion, without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(2) On the motion of the Special Counsel without first providing notice and opportunity for oral or written comments to the individual on whose behalf the stay was ordered. 5 U.S.C. 1214(b)(1)(D).

(e) *Additional information.* At any time, where appropriate, the Special Counsel, the agency, or both may be required to appear and present further information or explanation regarding a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed to make a decision regarding a stay.

Actions Against Administrative Law Judges

§1201.137 Covered actions; filing complaint; serving documents on parties.

(a) *Covered actions.* The jurisdiction of the Board under 5 U.S.C. 7521 and this subpart with respect to actions against administrative law judges is limited to proposals by an agency to take any of the following actions against an administrative law judge:

(1) Removal;

(2) Suspension;

(3) Reduction in grade;

(4) Reduction in pay; and

(5) Furlough of 30 days or less.

(b) *Place of filing.* To initiate an action against an administrative law judge under this subpart, an agency must file a complaint with the Clerk of the Board.

(c) *Initial filing and service.* The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative.

The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service.

(d) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(e) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the Clerk of the Board. Service may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§1201.138 Contents of complaint.

A complaint filed under this section must describe with particularity the facts that support the proposed agency action.

§1201.139 Rights; answer to complaint.

(a) *Responsibilities of Clerk of the Board.* The Clerk of the Board shall furnish a copy of the applicable Board regulations to each administrative law judge named as a respondent in the complaint and shall inform each respondent of his or her rights under paragraph (b) of this section and the requirements regarding the timeliness and content of an answer to the agency's complaint under paragraphs (c) and (d), respectively, of this section.

(b) *Rights.* When an agency files a complaint proposing an action against an administrative law judge under 5 U.S.C. 7521 and this subpart, the administrative law judge has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before an administrative law judge;

(4) To a written decision, issued at the earliest practicable date, in which the administrative law judge states the reasons for his or her decision; and

(5) To a copy of the administrative law judge's decision and subsequent final decision by the Board, if any.

(c) *Filing and default.* A respondent named in an agency complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a respondent fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§1201.140 Judge; requirement for finding of good cause.

(a) *Judge.* (1) An administrative law judge will hear an action brought by an employing agency under this subpart against a respondent administrative law judge.

(2) The judge will issue an initial decision pursuant to 5 U.S.C. 557. The

applicable provisions of §§ 1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

(b) *Requirement for finding of good cause.* A decision on a proposed agency action under this subpart against an administrative law judge will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after a finding of good cause as required by 5 U.S.C. 7521 has been made.

§1201.141 Judicial review.

An administrative law judge subject to a final Board decision authorizing a proposed agency action under 5 U.S.C. 7521 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 7703.

§1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges that an agency has interfered with the judge's qualified decisional independence so as to constitute an unauthorized action under 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and service requirements of § 1201.137 apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

Removal From the Senior Executive Service

§1201.143 Right to hearing; filing complaint; serving documents on parties.

(a) *Right to hearing.* If an agency proposes to remove a career appointee from the Senior Executive Service under 5 U.S.C. 3592(a) (2) and 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official designated by the Board. Under 5 CFR 359.502, the agency proposing the removal must provide the appointee 30 days advance notice and must advise the appointee of the right to request a hearing. If the appointee files the request at least 15 days before the effective date of the proposed removal, the request will be granted.

(b) *Place of filing.* A request for an informal hearing under paragraph (a) of this section must be filed with the Clerk of the Board. After the request has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(d) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(e) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§1201.144 Hearing procedures; referring the record.

(a) The official designated to hold an informal hearing requested by a career appointee whose removal from the Senior Executive Service has been proposed under 5 U.S.C. 3592(a)(2) and 5 CFR 359.502 will be a judge, as defined at §1201.4(a) of this part.

(b) The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the judge. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the judge or the Board.

(c) The judge will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§1201.145 No appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's action or any action by the judge or the Board in cases arising under §1201.143(a) of this part. The removal action will not be delayed as a result of the hearing.

Requests for Protective Orders

§1201.146 Requests for protective orders by the Special Counsel.

(a) Under 5 U.S.C. 1204(e)(1)(B), the Board may issue any order that may be necessary to protect a witness or other individual from harassment during an investigation by the Special Counsel or during the pendency of any proceeding before the Board, except that an agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation.

(b) Any motion by the Special Counsel requesting a protective order must include a concise statement of reasons justifying the motion, together with any relevant documentary evidence. Where the request is made in connection with a pending Special Counsel proceeding, the motion must be filed as early in the proceeding as practicable.

(c) Where there is a pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the judge conducting the proceeding, and the judge will rule on the motion. Where there is no pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the Clerk of the Board, and the Board will designate a judge, as defined at §1201.4(a) of this part, to rule on the motion.

§1201.147 Requests for protective orders by persons other than the Special Counsel.

Requests for protective orders by persons other than the Special Counsel in connection with pending original jurisdiction proceedings are governed by §1201.55(d) of this part.

§1201.148 Enforcement of protective orders.

A protective order issued by a judge or the Board under this subpart may be enforced in the same manner as provided under subpart F of this part for Board final decisions and orders.

Dated: September 10, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–24440 Filed 9–15–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 201 and 361

[Docket No. 93–126–5]

RIN 0579–AA64

Imported Seed and Screenings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the ''Imported Seed'' regulations by moving the regulations to a different chapter in the Code of Federal Regulations; establishing a seed analysis program with Canada; and allowing U.S. companies that import seed for cleaning or screenings for processing to enter into compliance agreements with the Animal and Plant Health Inspection Service. These changes are being made to reflect recent amendments to the Federal Seed Act and the transfer of responsibility for the import provisions of the act from the Agricultural Marketing Service to the Animal and Plant Health Inspection Service. These changes will bring the imported seed regulations into agreement with the amended Federal Seed Act, eliminate the need for sampling shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed without the direct monitoring of an Animal and Plant Health Inspection Service inspector.

EFFECTIVE DATE: October 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Federal Seed Act of 1939, as amended (FSA), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seed and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seed to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The USDA's regulations implementing the provisions of the FSA are found at 7 CFR part 201; the regulations implementing the foreign commerce provisions of the FSA are found in §§ 201.101 through 201.230 (referred to below as the regulations).

The responsibility for inspection of imported seeds under Title III of the FSA was transferred from the Agricultural Marketing Service (AMS) to the Animal and Plant Health Inspection Service (APHIS) by a final rule amending the delegations of authority from the Secretary of Agriculture that was published in the **Federal Register** on September 22, 1982 (47 FR 41725), and effective October 1, 1982.

In a proposed rule published in the **Federal Register** on October 4, 1996 (61 FR 51791–51810, Docket No. 93–126–4), we proposed to revise the regulations to reflect amendments to the FSA and the transfer of regulatory authority for Title III of the FSA from AMS to APHIS. To reflect that change in authority, we proposed to move the regulations from 7 CFR chapter I, which is one of the chapters in which AMS regulations appear, to 7 CFR chapter III, where APHIS' plant-related regulations appear. As part of that proposed move, we also proposed to update the regulations to reflect amendments to the FSA and make nonsubstantive editorial changes to the arrangement and wording of the regulatory text to improve its clarity. We also announced that we would host a public hearing on November 21, 1996, to provide interested persons with an opportunity to present their views regarding the proposed rule.

We solicited comments concerning the proposed rule for 60 days ending December 3, 1996. We received five comments by that date. The November 21, 1996, hearing was held as scheduled, but no members of the public attended to present comments (although one of the five comments mentioned above was included in the record of the public hearing at the request of the person who submitted the comment). The comments we received were from U.S. and Canadian seed analysts associations, a seed trade association, and two State departments of agriculture. Although all of the commenters offered support for the proposed rule, each of them offered suggestions or sought clarification regarding the changes proposed in the proposed rule. Those comments are discussed below.

Change in Responsible Canadian Agency

On April 1, 1997, the Canadian Food Inspection Agency, a public agency reporting to Canada's Minister of Agriculture and Agri-Food, was established. The Canadian Food Inspection Agency's responsibilities include plant health activities conducted at the Federal level, including the seed analysis and laboratory accreditation activities we had attributed to Agriculture and Agri-Food Canada in the proposed rule. Therefore, for accuracy, we will refer to the Canadian Food Inspection Agency, rather than to Agriculture and Agri-Food Canada, throughout this document. We have also updated the regulations in § 371.7(a) to reflect that change.

Discussion of Comments

Comment: The proposed regulations refer to an ''official seed analyst,'' which is defined as a ''registered member of the Association of Official Seed Analysts'' (AOSA). The AOSA does not have a category of ''registered member,'' and the voting category of membership in AOSA is entitled ''official laboratory.'' Therefore, the term ''official seed laboratory,'' which would be defined as an official laboratory member of AOSA, should be used instead of ''official seed analyst.''

Response: We agree with the commenter and have made the suggested changes. Specifically, we have changed the definition in § 361.1 of ''official seed analyst'' to ''official seed laboratory'' with the suggested definition, and we have changed a reference in § 361.8(a)(1) from ''official seed analyst'' to ''official seed laboratory.''

Comment: Members of the Commercial Seed Analysts Association of Canada (CSAAC) should be given the same recognition as the registered seed technologists and official seed analysts mentioned in the proposed rule.

Response: The role of the registered seed technologist and official seed analyst (now official seed laboratory, as noted above) in the proposed regulations and in this final rule is limited to analyzing representative samples of seed cleaned in the United States under a compliance agreement as set forth in § 361.8(a)(1). While it is likely that members of CSAAC are working in laboratories associated with or accredited by the Canadian Food Inspection Agency and will, thus, be involved in the analysis and certification of seed in Canada under § 361.7, we do not foresee that they would be involved in the analysis of seed after it has been imported into the United States and cleaned. For that reason, we do not believe it is necessary to explicitly mention CSAAC or its members in the regulations. Therefore, we have made no changes in this final rule based on that comment.

Comment: The noxious weed seed tolerances set out in § 361.6(b) are too lenient. As it is currently written, the discovery of two seeds in an initial examination triggers a second examination; if two or fewer seeds are found in the second examination, the lot of seed may be imported. Such a tolerance would allow approximately 100 noxious weed seeds per 50 lb. bag for a crop seed the size of wheat. The discovery of even one or two seeds in a second examination serves only to confirm that prohibited noxious weed seeds are present in the lot of seed. The regulations should be changed to require a second examination upon the discovery of a single noxious weed seed; if the second examination yields one or more noxious weed seeds, then the lot of seed should be refused entry.

Response: The tolerances established under the FSA are consistent with those of the Association of Official Seed Analysts (AOSA) and the Association of American Seed Control Officials' ''Recommended Uniform State Seed Law'' (RUSSL), as amended in July 1996. The RUSSL recommends that State seed laws recognize the tolerances in AOSA's ''Rules for Testing Seeds.'' Also, within the framework of the General Agreement on Tariffs and Trade and the North American Free Trade Agreement, a quarantine action such as that recommended by the commenter, i.e. prohibiting all weed seeds with no tolerances, is not appropriate for pests that are widespread in the importing country. All of the weeds for which we allow tolerances are already established and widespread in the United States. Therefore, we have made no changes in this final rule based on that comment.

Comment: The list of noxious weeds in § 361.6 does not include many species of weeds that are prohibited in many States. This could result in a State having to accept an imported lot of seed that contains weed seeds that are prohibited by that State but not by regulations. The list of noxious weeds in § 361.6 should be expanded to include noxious weed seed prohibited by States.

Response: The commenter is correct in noting that many States prohibit weeds that are not included on the list of noxious weeds in § 361.6; it is also true, however, that the list in § 361.6 is more restrictive than the noxious weed lists maintained by some other States. Generally speaking, the weeds found in the list in § 361.6 are those weeds prohibited most often by individual States. Any State may inspect seed shipments sold within its borders and can issue a ''stop sale'' if a State inspector finds weeds on the State's prohibited list. Further, the AMS' regulations in 7 CFR 201.50 recognize each States' prohibited weed list in enforcing the interstate provisions of the FSA. Because individual States have the authority to prevent the sale within their borders of seed containing weed seeds prohibited under State regulations, we do not believe it is necessary to amend the imported seed regulations to reflect the noxious weed lists of all the States. We have, therefore, made no changes in this final rule based on that comment.

Comment: As set forth in the proposed rule, the regulations in § 361.7 are unclear as to who in Canada will be doing the sampling of seed intended for export to the United States. Sampling must be performed by persons trained in proper sampling and who are in no way biased as to test outcome.

Response: The sampling in Canada will be performed in the manner seen as necessary by the commenter. Seed samples drawn in Canada pursuant to the regulations in § 361.7 will be analyzed by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency, and the Canadian Food Inspection Agency has informed APHIS that it will require those laboratories testing seed for export to the United States to test only ''officially recognized samples'' as defined by the Canada Seeds Regulations. Thus, the seed will have to be drawn according to recognized methods by an accredited grader, a person licensed to operate an approved conditioner, or a person accredited by an official certifying agency to sample seed.

Comment: APHIS should require sampling for seed imported for feeding purposes. Seed screenings are often used as a component of feed and may contain a high percentage of viable noxious weed seeds. There should be limitations on viable noxious weed seeds in feed and some measure of sampling or monitoring.

Response: As we noted in the proposed rule with regard to screenings, the process usually used to produce animal feed—i.e., an extrusion process that includes heating and pelletizing—is sufficient to devitalize any live seed, which reduces to an insignificant level any risk that the feed would contain any viable noxious weed seeds. We do not, therefore, believe that it is necessary to require sampling or monitoring for imported seed declared for feeding purposes.

Comment: When seed intended for planting purposes is imported and found to be adulterated with noxious weed seeds, the regulations would allow the seed to enter the United States if the importer withdraws the original declaration and files a new declaration stating that the seed is being imported for feeding or manufacturing purposes. How can APHIS be sure that the importer will not use the seed for planting purposes once it reaches its final destination in the United States?

Response: There are avenues that an importer can pursue to render adulterated seed fit for planting purposes and penalties in place to discourage the type of action envisioned by the commenter. If a lot of seed is deemed to be adulterated, the importer of the seed would have the option of sending the seed to a seed-cleaning facility. After the noxious weed seeds are removed, the importer could sell the seed for planting purposes. When an importer instead chooses to file a new declaration for the seed, that new declaration must include a statement that no part of the seed will be used for planting purposes, and the importer will be bound to abide by the new declaration. Under § 304 of the FSA (7 U.S.C. 1586), it is unlawful for any person to sell or offer for sale any seed or screenings for seeding (planting) purposes if the seed or screenings were imported for other than seeding (planting) purposes. Any seed sold, delivered for transportation in interstate commerce, or transported in interstate or foreign commerce in violation of any of the provisions of the FSA would, under § 405 of the FSA (7 U.S.C. 1595), be subject to seizure. Further, § 406 of the FSA (7 U.S.C. 1596) provides that any person who knowingly violates any provision of the FSA or the regulations shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of $1,000 for the first offense and a fine of not more than $2,000 for each subsequent offense. In addition, if the importer intends to sell the adulterated seed for planting purposes but files a new declaration stating that the seed is to be used for feed or manufacturing purposes merely to secure the release of the seed, the importer could be subject to the provisions of 18 U.S.C. 1001, which provides, in part, that ''Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.''

Comment: Section 361.3 contains references to seed treated with mercurials. Is it not the case that mercurial seed treatments were banned several years ago?

Response: With regard to the treatment of seeds with mercurials or similarly toxic substances, the scope of the FSA and the regulations is limited to requiring that such treated seed be properly labeled. Those labeling requirements, as noted by the commenter, are contained in § 361.3 of the regulations. However, because mercurials are harmful to humans and vertebrate animals, they would be covered under the Food and Drug Administration's (FDA's) regulations in 16 CFR 2.25(b), which state, in part, that the FDA ''will regard as adulterated any interstate shipment of the food seeds wheat, corn, oats, rye, barley, and sorghum bearing a poisonous treatment in excess of a recognized tolerance or treatment for which no tolerance or exemption from tolerance is recognized in regulations promulgated pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act, unless such seeds have been adequately denatured by a suitable color to prevent their subsequent inadvertent use as food for man or feed for animals.'' Thus, seeds deemed adulterated by the FDA would be subject to appropriate action by the FDA under its authority.

Comment: Will APHIS monitor the Canadian seed testing laboratories that analyze the seed to be exported to the United States? What actions will be taken if APHIS finds that one of those Canadian laboratories is conducting incorrect or incomplete analyses on seed to be exported to the United States?

Response: APHIS will take samples of Canadian-origin seed for monitoring purposes. If our test results do not agree with those of the Canadian seed-testing laboratory that analyzed the seed, we will notify the Canadian Food Inspection Agency of the discrepancy and cooperate with the Canadian Food Inspection Agency in its investigation of the cause of the discrepancy. If sampling or laboratory errors are found to have occurred, corrective action will be initiated by the Canadian Food Inspection Agency. Further, APHIS will increase its monitoring of seed shipments that have been analyzed by the laboratory in question.

Comment: Section 361.9 of the proposed rule states that seed importers must retain a seed sample from each lot of imported seed for at least 1 year. This requirement is too burdensome and should be eliminated; such samples will not assist in the tracing or monitoring of potential problems. In addition, it has traditionally been the role of the seed exporter to maintain samples of seed from each lot shipped.

Response: As we noted in the proposed rule, seed companies must already retain records and samples to comply with the AMS' regulations promulgated under the interstate provisions of the FSA, so we do not believe that the recordkeeping requirements of this rule place an additional burden on those companies. Further, even if exporters retain samples from lots of seed shipped to this country, only the importer's sample can be relied upon to accurately reflect the content of the seed lot that was actually received in the United States. Therefore, we continue to believe that it is necessary for importers to retain a seed sample to provide a reference that would help APHIS to trace the source of potential problems and monitor the efficacy of noxious weed examinations and cleaning.

Other Changes

We have made a change to the wording of the introductory text of paragraph (a) in § 361.4, ''Inspection at the port of first arrival.'' In the proposed rule, that paragraph stated that all agricultural seed, vegetable seed, and screenings offered for entry into the United States shall be ''subject to inspection'' at the port of first arrival. Because the phrase ''subject to inspection'' does not accurately represent what must occur at the port of first arrival prior to seed and screenings, or any other agricultural commodity, being released for entry into the United States, we have changed that paragraph to make it clear that the seed or screenings must be made available for examination by an inspector and must remain at the port of first arrival until released by an inspector.

Similarly, we have changed those sections of the regulations that refer to an APHIS inspector's ''supervision'' of certain activities, i.e., the destruction or cleaning of seed, the correction of the labeling on a lot of seed, the removal of seed from containers, and the enforcement of compliance agreements. To state that an APHIS inspector will ''supervise'' such activities may imply that the inspector is in a position of authority over the persons conducting such activities and is, therefore, responsible for all issues associated with the conduct of those activities, even issues unrelated to the inspector's authority such as worker safety or compliance with labor laws. The actual role of an APHIS inspector in such situations is to ensure that the requirements of APHIS' regulations are being satisfied; therefore, we have replaced references to ''supervision'' with references to ''monitoring'' to more clearly represent the role of APHIS inspectors participating in activities conducted in connection with the regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the ''Imported Seed'' regulations by moving the regulations to a different chapter in the Code of Federal Regulations, establishing a seed analysis program with Canada, and allowing U.S. companies that import seed for cleaning or screenings for processing to enter into compliance agreements with APHIS. With these changes, the regulations will reflect recent amendments to the FSA and the transfer of responsibility for the import provisions of the act from AMS to APHIS, eliminate the need for sampling shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed with monitoring by an APHIS inspector.

No economic impact will result from shifting the regulations to a different chapter in the Code of Federal Regulations. However, the elimination of the requirement that shipments of Canadian-origin seed be sampled at the border will result in savings to APHIS. This rule will require that all shipments of Canadian-origin agricultural or vegetable seed be accompanied by a certificate of analysis issued by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency; that certificate of analysis precludes the need for sampling and testing those shipments of Canadian-origin seed. The certificate of analysis will confirm the seed shipment meets the noxious weed tolerances and labeling requirements of the FSA and the regulations. Therefore, APHIS will no longer have to rely on U.S. Customs Service inspectors at the Canadian border to draw samples from shipments of imported seed and mail the seed samples to APHIS'' Seed Examination Facility (SEF) in Beltsville, MD, for testing. Under the provisions of this rule, the cost of the analysis and

subsequent certification will be borne by the owner or exporter of the seed, so there will be a reduction in the sampling and testing costs currently borne by APHIS. We estimate that APHIS will save over $103,000 annually in salary and related expenditures associated with the testing of Canadian-origin seed.

Imports of field and garden seeds from Canada represent 80 percent of total U.S. seed imports; from 1992 to 1994, imports of the regulated agricultural and vegetable seeds from Canada into the United States averaged 107,270 tons per year, with an average value of $63.059 million. From fiscal year 1989 to fiscal year 1993, the number of seed shipments sampled increased from 2,451 to 3,615 shipments per year, an increase of 47.5 percent; over the same period, SEF tested an average of 2,907 seed samples per year. In fiscal years 1994 and 1995, approximately 5,000 Canadian seed samples were tested. Only 3 percent of Canadian seed shipments were refused admission for noxious weed content.

This final rule's requirement that Canadian-origin seed be certified prior to import into the United States will eliminate the need for the routine testing of Canadian-origin seed and thus eliminate the costs associated with that testing. Without the certificate requirement, the SEF botanist spent approximately 90 percent of his time testing Canadian-origin seed for noxious weed seeds, while his assistant spent about 50 percent of his time on this task. In terms of salaries and benefits, the costs associated with the SEF's testing of Canadian seed are estimated to exceed $100,000 annually. With the certificate requirement for Canadian seed in place, the time and costs spent on testing Canadian seed may be shifted into the SEF's other areas of responsibility.

This rule will also result in savings in salary for the time spent by APHIS or State inspectors monitoring the cleaning of seed lots refused admission due to noxious weed seed content. In fiscal year 1995, 61 seed shipments were refused entry due to noxious weed seed content above tolerances. An inspector spends an average of about 4 hours monitoring the cleaning of each refused shipment. The savings in the inspector's monitoring time in this activity is estimated as $1,262.

This rule also allows companies that import uncleaned seed for reconditioning and resale to enter into a compliance agreement with APHIS, which will likely yield a savings to APHIS in inspection time since only periodic inspections of these companies will be necessary to ensure compliance with the conditions of the agreement. In fiscal year 1995, two companies in Idaho imported a total of 48 lots of seed that required cleaning; APHIS employed a contractor to monitor the cleaning of those adulterated seed lots. A company operating under a compliance agreement will not require monitoring for every lot of seed imported for cleaning, so we expect there will be an estimated $1,664 annual savings in salary and benefits as a result of seed-cleaning companies entering into compliance agreements with APHIS.

In total, we expect an estimated annual reduction of approximately $103,000 in the costs associated with the sampling and testing of Canadian origin seed and the monitoring of seed cleaning.

This rule is expected to impact exporters of Canadian-origin seed, the majority of which—over 95 percent—are Canadian businesses. The cost of obtaining a certificate of analysis from a Canadian government or private laboratory is estimated to range from $13.00 to $58.00 per lot, depending on the type of seed to be analyzed, or an average of $35 per lot. The cost is the same regardless of the size of the lot, which can range from 50 to 50,000 pounds. Based upon fiscal year 1995 figures, there are approximately 6,000 seed shipments per year from Canada that will require certification as a condition of importation into the United States. For the majority of shipments, the cost of the certification does not represent an additional expense because much of the seed is likely to have been tested anyway to meet the requirements of the exporting company's contracts with its importing customers. Nevertheless, the cost of a certificate is small in comparison to the average value of a seed shipment (which is typically worth thousands of dollars) and will not, therefore, impose a significant economic burden on Canadian seed exporters, large or small. For this reason, any cost that is passed on to U.S. buyers of Canadian seed is likewise estimated to be small.

Less than 2 percent of the Canadian seed imported into the United States is imported through transactions between Canadian seed exporters and individual U.S. farms. (Individual farms located near the U.S.-Canadian border typically import small amounts of Canadian seed to be used directly on farms.) While the exact number of these entities is not known, it is expected that the impact to these individuals will be small because seed sold in such small quantities is, in almost all cases, already analyzed and certified prior to its entry into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0124.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, title 7, chapters I and III, of the Code of Federal Regulations are amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1592.

§ 201.38 [Amended]

2. Section 201.38 is amended by removing the words ''§§ 201.208 and 201.209'' and adding the words ''§ 361.4 of this title'' in their place.

§§ 201.101 through 201.230 [Removed]

3. In 7 CFR part 201, §§ 201.101 through 201.230 are removed.

4. A new 7 CFR part 361 is added to read as follows:

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

Sec.

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.1 Definitions.

Terms used in the singular form in this part shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this part, shall be construed, respectively, to mean:

Administrator. The Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other individual to whom the Administrator delegates authority to act in his or her stead.

Agricultural seed. The following kinds and varieties of grass, forage, and field crop seed that are used for seeding purposes in the United States:

Agrotricum—x *Agrotriticum* Ciferri and Giacom.
Alfalfa—*Medicago sativa* L.
Alfilaria—*Erodium cicutarium* (L.) L'Her.
Alyceclover—*Alysicarpus vaginalis* (L.) DC.
Bahiagrass—*Paspalum notatum* Fluegge
Barley—*Hordeum vulgare* L.
Barrelclover—*Medicago truncatula* Gaertn.
Bean, adzuki—*Vigna angularis* (Willd.) Ohwi and Ohashi
Bean, field—*Phaseolus vulgaris* L.
Bean, mung—*Vigna radiata* (L.) Wilczek
Beet, field—*Beta vulgaris* L. subsp. *vulgaris*
Beet, sugar—*Beta vulgaris* L. subsp. *vulgaris*
Beggarweed, Florida—*Desmodium tortuosum* (Sw.) DC.
Bentgrass, colonial—*Agrostis capillaris* L.
Bentgrass, creeping—*Agrostis stolonifera* L. var. *palustris* (Huds.) Farw.
Bentgrass, velvet—*Agrostis canina* L.
Bermudagrass—*Cynodon dactylon* (L.) Pers. var. *dactylon*
Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *aridus* Harlan and de Wet
Bluegrass, annual—*Poa annua* L.
Bluegrass, bulbous—*Poa bulbosa* L.
Bluegrass, Canada—*Poa compressa* L.
Bluegrass, glaucantha—*Poa glauca* Vahl
Bluegrass, Kentucky—*Poa pratensis* L.
Bluegrass, Nevada—*Poa secunda* J.S. Presl
Bluegrass, rough—*Poa trivialis* L.
Bluegrass, Texas—*Poa arachnifera* Torr.
Bluegrass, wood—*Poa nemoralis* L.
Bluejoint—*Calamagrostis canadensis* (Michx.) P. Beauv.
Bluestem, big—*Andropogon gerardii* Vitm. var. gerardii
Bluestem, little—*Schizachyrium scoparium* (Michx.) Nash
Bluestem, sand—*Andropogon hallii* Hack.
Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng
Bottlebrush-squirreltail—*Elymus elymoides* (Raf.) Swezey
Brome, field—*Bromus arvensis* L.
Brome, meadow—*Bromus biebersteinii* Roem. and Schult.
Brome, mountain—*Bromus marginatus* Steud.
Brome, smooth—*Bromus inermis* Leyss.
Broomcorn—*Sorghum bicolor* (L.) Moench
Buckwheat—*Fagopyrum esculentum* Moench
Buffalograss—*Buchloe dactyloides* (Nutt.) Engelm.
Buffelgrass—*Cenchrus ciliaris* L.
Burclover, California—*Medicago polymorpha* L.
Burclover, spotted—*Medicago arabica* (L.) Huds.
Burnet, little—*Sanguisorba minor* Scop.
Buttonclover—*Medicago orbicularis* (L.) Bartal.
Canarygrass—*Phalaris canariensis* L.
Canarygrass, reed—*Phalaris arundinacea* L.
Carpetgrass—*Axonopus fissifolius* (Raddi) Kuhlm.
Castorbean—*Ricinus communis* L.
Chess, soft—*Bromus hordeaceus* L.
Chickpea—*Cicer arietinum* L.
Clover, alsike—*Trifolium hybridum* L.
Clover, arrowleaf—*Trifolium vesiculosum* Savi
Clover, berseem—*Trifolium alexandrinum* L.
Clover, cluster—*Trifolium glomeratum* L.
Clover, crimson—*Trifolium incarnatum* L.
Clover, Kenya—*Trifolium semipilosum* Fresen.
Clover, ladino—*Trifolium repens* L.
Clover, lappa—*Trifolium lappaceum* L.
Clover, large hop—*Trifolium campestre* Schreb.
Clover, Persian—*Trifolium resupinatum* L.
Clover, red or
Red clover, mammoth—*Trifolium pratense* L.
Red clover, medium—*Trifolium pratense* L.
Clover, rose—*Trifolium hirtum* All.
Clover, small hop or suckling—*Trifolium dubium* Sibth.
Clover, strawberry—*Trifolium fragiferum* L.
Clover, sub or subterranean—*Trifolium subterraneum* L.
Clover, white—*Trifolium repens* L. (also see Clover, ladino)
Clover—(also see Alyceclover, Burclover, Buttonclover, Sourclover, Sweetclover)
Corn, field—*Zea mays* L.
Corn, pop—*Zea mays* L.
Cotton—*Gossypium* spp.
Cowpea—*Vigna unguiculata* (L.) Walp. subsp. *unguiculata*
Crambe—*Crambe abyssinica* R.E. Fries
Crested dogtail—*Cynosurus cristatus* L.
Crotalaria, lance—*Crotalaria lanceolata* E. Mey.
Crotalaria, showy—*Crotalaria spectabilis* Roth
Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polh.
Crotalaria, striped or smooth—*Crotalaria pallida* Ait.
Crotalaria, sunn—*Crotalaria juncea* L.
Crownvetch—*Coronilla varia* L.
Dallisgrass—*Paspalum dilatatum* Poir.
Dichondra—*Dichondra repens* Forst. and Forst. f.
Dropseed, sand—*Sporobolus cryptandrus* (Torr.) A. Gray
Emmer—*Triticum dicoccon* Schrank
Fescue, chewings—*Festuca rubra* L. subsp. *commutata* Gaud.
Fescue, hair—*Festuca tenuifolia* Sibth.
Fescue, hard—*Festuca brevipila* Tracey
Fescue, meadow—*Festuca pratensis* Huds.
Fescue, red—*Festuca rubra* L. subsp. *rubra*
Fescue, sheep—*Festuca ovina* L. var. *ovina*
Fescue, tall—*Festuca arundinacea* Schreb.
Flax—*Linum usitatissimum* L.
Galletagrass—*Hilaria jamesii* (Torr.) Benth.
Grama, blue—*Bouteloua gracilis* (Kunth) Steud.
Grama, side-oats—*Bouteloua curtipendula* (Michx.) Torr.
Guar—*Cyamopsis tetragonoloba* (L.) Taub.
Guineagrass—*Panicum maximum* Jacq. var. *maximum*
Hardinggrass—*Phalaris stenoptera* Hack.
Hemp—*Cannabis sativa* L.
Indiangrass, yellow—*Sorghastrum nutans* (L.) Nash
Indigo, hairy—*Indigofera hirsuta* L.
Japanese lawngrass—*Zoysia japonica* Steud.
Johnsongrass—*Sorghum halepense* (L.) Pers.
Kenaf—*Hibiscus cannabinus* L.
Kochia, forage—*Kochia prostrata* (L.) Schrad.
Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Maesen and S. Almeida
Lentil—*Lens culinaris* Medik.
Lespedeza, Korean—*Kummerowia stipulacea* (Maxim.) Makino
Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum.-Cours.) G. Don
Lespedeza, Siberian—*Lespedeza juncea* (L. f.) Pers.
Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindler
Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood
Lovegrass, weeping—*Eragrostis curvula* (Schrad.) Nees
Lupine, blue—*Lupinus angustifolius* L.
Lupine, white—*Lupinus albus* L.
Lupine, yellow—*Lupinus luteus* L.
Manilagrass—*Zoysia matrella* (L.) Merr.
Meadow foxtail—*Alopecurus pratensis* L.
Medic, black—*Medicago lupulina* L.
Milkvetch or cicer milkvetch—*Astragalus cicer* L.
Millet, browntop—*Brachiaria ramosa* (L.) Stapf
Millet, foxtail—*Setaria italica* (L.) Beauv.
Millet, Japanese—*Echinochloa frumentacea* Link
Millet, pearl—*Pennisetum glaucum* (L.) R. Br.
Millet, proso—*Panicum miliaceum* L.
Molassesgrass—*Melinis minutiflora* Beauv.
Mustard, black—*Brassica nigra* (L.) Koch
Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.

Mustard, white—*Sinapis alba* L.
Napiergrass—*Pennisetum purpureum* Schumach.
Needlegrass, green—*Stipa viridula* Trin.
Oat—*Avena byzantina* C. Koch, *A. sativa* L., *A. nuda* L.
Oatgrass, tall—*Arrhenatherum elatius* (L.) J.S. Presl and K.B. Presl
Orchardgrass—*Dactylis glomerata* L.
Panicgrass, blue—*Panicum antidotale* Retz.
Panicgrass, green—*Panicum maximum* Jacq. var. *trichoglume* Robyns
Pea, field—*Pisum sativum* L.
Peanut—*Arachis hypogaea* L.
Poa trivialis—(see Bluegrass, rough)
Rape, annual—*Brassica napus* L. var. *annua* Koch
Rape, bird—*Brassica rapa* L. subsp. *rapa*
Rape, turnip—*Brassica rapa* L. subsp. *silvestris* (Lam.) Janchen
Rape, winter—*Brassica napus* L. var. *biennis* (Schubl. and Mart.) Reichb.
Redtop—*Agrostis gigantea* Roth
Rescuegrass—*Bromus catharticus* Vahl
Rhodesgrass—*Chloris gayana* Kunth
Rice—*Oryza sativa* L.
Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker
Roughpea—*Lathyrus hirsutus* L.
Rye—*Secale cereale* L.
Rye, mountain—*Secale strictum* (K.B. Presl) K.B. Presl subsp. *strictum*
Ryegrass, annual or Italian—*Lolium multiflorum* Lam.
Ryegrass, intermediate—*Lolium* x *hybridum* Hausskn.
Ryegrass, perennial—*Lolium perenne* L.
Ryegrass, Wimmera—*Lolium rigidum* Gaud.
Safflower—*Carthamus tinctorius* L.
Sagewort, Louisiana—*Artemisia ludoviciana* Nutt.
Sainfoin—*Onobrychis viciifolia* Scop.
Saltbush, fourwing—*Atriplex canescens* (Pursh) Nutt.
Sesame—*Sesamum indicum* L.
Sesbania—*Sesbania exaltata* (Raf.) A.W. Hill
Smilo—*Piptatherum miliaceum* (L.) Coss.
Sorghum—*Sorghum bicolor* (L.) Moench
Sorghum almum—*Sorghum* x *almum* L. Parodi
Sorghum-sudangrass—*Sorghum* x *drummondii* (Steud.) Millsp. and Chase
Sorgrass—*Rhizomatous* derivatives of a johnsongrass x sorghum cross or a johnsongrass x sudangrass cross
Southernpea—(See Cowpea)
Sourclover—*Melilotus indicus* (L.) All.
Soybean—*Glycine max* (L.) Merr.
Spelt—*Triticum spelta* L.
Sudangrass—*Sorghum* x *drummondii* (Steud.) Millsp. and Chase
Sunflower—*Helianthus annuus* L.
Sweetclover, white—*Melilotus albus* Medik.
Sweetclover, yellow—*Melilotus officinalis* Lam.
Sweet vernalgrass—*Anthoxanthum odoratum* L.
Sweetvetch, northern—*Hedysarum boreale* Nutt.
Switchgrass—*Panicum virgatum* L.
Timothy—*Phleum pratense* L.
Timothy, turf—*Phleum bertolonii* DC.
Tobacco—*Nicotiana tabacum* L.
Trefoil, big—*Lotus uliginosus* Schk.
Trefoil, birdsfoot—*Lotus corniculatus* L.
Triticale—x *Triticosecale* Wittm. (Secale x Triticum)
Vaseygrass—*Paspalum urvillei* Steud.
Veldtgrass—*Ehrharta calycina* J.E. Smith
Velvetbean—*Mucuna pruriens* (L.) DC. var. *utilis* (Wight) Burck
Velvetgrass—*Holcus lanatus* L.
Vetch, common—*Vicia sativa* L. subsp. *sativa*
Vetch, hairy—*Vicia villosa* Roth subsp. *villosa*
Vetch, Hungarian—*Vicia pannonica* Crantz
Vetch, monantha—*Vicia articulata* Hornem.
Vetch, narrowleaf or blackpod—*Vicia sativa* L. subsp. *nigra* (L.) Ehrh.
Vetch, purple—*Vicia benghalensis* L.
Vetch, woollypod or winter—*Vicia villosa* Roth subsp. *varia* (Host) Corb.
Wheat, common—*Triticum aestivum* L.
Wheat, club—*Triticum compactum* Host
Wheat, durum—*Triticum durum* Desf.
Wheat, Polish—*Triticum polonicum* L.
Wheat, poulard—*Triticum turgidum* L.
Wheat x Agrotricum—*Triticum* x *Agrotriticum*
Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) A. Love
Wheatgrass, crested or fairway crested—*Agropyron cristatum* (L.) Gaertn.
Wheatgrass, crested or standard crested—*Agropyron desertorum* (Link) Schult.
Wheatgrass, intermediate—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
Wheatgrass, pubescent—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
Wheatgrass, Siberian—*Agropyron fragile* (Roth) Candargy subsp. *sibiricum* (Willd.) Meld.
Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinn.
Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. and J.G. Smith) Gould subsp. *lanceolatus*
Wheatgrass, tall—*Elytrigia elongata* (Host) Nevski
Wheatgrass, western—*Pascopyrum smithii* (Rydb.) A. Love
Wildrye, basin—*Leymus cinereus* (Scribn. and Merr.) A. Love
Wildrye, Canada—*Elymus canadensis* L.
Wildrye, Russian—*Psathyrostachys juncea* (Fisch.) Nevski
Zoysia japonica—(see Japanese lawngrass)
Zoysia matrella—(see Manilagrass)

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

APHIS inspector. Any employee of the Animal and Plant Health Inspection Service or any other individual authorized by the Administrator to enforce this part.

Coated Seed. Any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are excluded.

Declaration. A written statement of a grower, shipper, processor, dealer, or importer giving for any lot of seed the kind, variety, type, origin, or the use for which the seed is intended.

Hybrid. When applied to kinds or varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining two or more inbred lines; one inbred or a single cross with an open-pollinated variety; or two selected clones, seed lines, varieties, or species. ''Controlling the pollination'' means to use a method of hybridization that will produce pure seed that is at least 75 percent hybrid seed. Hybrid designations shall be treated as variety names.

Import/importation. To bring into the territorial limits of the United States.

Kind. One or more related species or subspecies that singly or collectively is known by one common name, e.g., soybean, flax, or carrot.

Lot of seed. A definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for the factors that appear in the labeling.

Mixture. Seeds consisting of more than one kind or variety, each present in excess of 5 percent of the whole.

Official seed laboratory. An official laboratory member of the Association of Official Seed Analysts.

Pelleted seed. Any seed unit covered with a substance that changes the size, shape, or weight of the original seed in order to improve the plantability or singulation of the seed.

Person. Any individual, partnership, corporation, company, society, association, receiver, trustee, or other legal entity or organized group.

Port of first arrival. The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territorial limits of the United States, and where inspection of articles is carried out by APHIS inspectors.

Registered seed technologist. A registered member of the Society of Commercial Seed Technologists.

Screenings. Chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seeds in any kind of cleaning or processing and which contains less than 25 percent of live agricultural or vegetable seeds.

State. Any State, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

United States. All of the States.

Variety. A subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind.

Vegetable seed. The seed of the following kinds and varieties that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seed:

Artichoke—*Cynara cardunculus* L. subsp. *cardunculus*
Asparagus—*Asparagus officinalis* Baker
Asparagusbean or yard-long bean—*Vigna unguiculata* (L.) Walp. subsp. *sesquipedalis* (L.) Verdc.
Bean, garden—*Phaseolus vulgaris* L.
Bean, lima—*Phaseolus lunatus* L.
Bean, runner or scarlet runner—*Phaseolus coccineus* L.
Beet—*Beta vulgaris* L. subsp. *vulgaris*
Broadbean—*Vicia faba* L.
Broccoli—*Brassica oleracea* L. var. *botrytis* L.
Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* DC.
Burdock, great—*Arctium lappa* L.
Cabbage—*Brassica oleracea* L. var. *capitata* L.
Cabbage, Chinese—*Brassica rapa* L. subsp. *pekinensis* (Lour.) Hanelt
Cabbage, tronchuda—*Brassica oleracea* L. var. *costata* DC.
Cantaloupe—(see Melon)
Cardoon—*Cynara cardunculus* L. subsp. *cardunculus*
Carrot—*Daucus carota* L. subsp. *sativus* (Hoffm.) Arcang.
Cauliflower—*Brassica oleracea* L. var. *botrytis* L.
Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaud.
Celery—*Apium graveolens* L. var. *dulce* (Mill.) Pers.
Chard, Swiss—*Beta vulgaris* L. subsp. *cicla* (L.) Koch
Chicory—*Cichorium intybus* L.
Chives—*Allium schoenoprasum* L.
Citron—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *citroides* (Bailey) Mansf.
Collards—*Brassica oleracea* L. var. *acephala* DC.
Corn, sweet—*Zea mays* L.
Cornsalad—*Valerianella locusta* (L.) Laterrade
Cowpea—*Vigna unguiculata* (L.) Walp. subsp. *unguiculata*
Cress, garden—*Lepidium sativum* L.
Cress, upland—*Barbarea verna* (Mill.) Asch.
Cress, water—*Rorippa nasturtium-aquaticum* (L.) Hayek
Cucumber—*Cucumis sativus* L.
Dandelion—*Taraxacum officinale* Wigg.
Dill—*Anethum graveolens* L.
Eggplant—*Solanum melongena* L.
Endive—*Cichorium endivia* L.
Gherkin, West India—*Cucumis anguria* L.
Kale—*Brassica oleracea* L. var. *acephala* DC.
Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (Bailey) Musil
Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Reichb.
Kohlrabi—*Brassica oleracea* L. var. *gongylodes* L.
Leek—*Allium porrum* L.
Lettuce—*Lactuca sativa* L.
Melon—*Cucumis melo* L.
Muskmelon—(see Melon).
Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.
Mustard, spinach—*Brassica perviridis* (Bailey) Bailey
Okra—*Abelmoschus esculentus* (L.) Moench
Onion—*Allium cepa* L.
Onion, Welsh—*Allium fistulosum* L.
Pak-choi—*Brassica rapa* L. subsp. *chinensis* (L.) Hanelt
Parsley—*Petroselinum crispum* (Mill.) A.W. Hill
Parsnip—*Pastinaca sativa* L.
Pea—*Pisum sativum* L.
Pepper—*Capsicum* spp.
Pe-tsai—(see Chinese cabbage).
Pumpkin—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poiret, and C. *maxima* Duchesne
Radish—*Raphanus sativus* L.
Rhubarb—*Rheum rhabarbarum* L.
Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Reichb.
Sage—*Salvia officinalis* L.
Salsify—*Tragopogon porrifolius* L.
Savory, summer—*Satureja hortensis* L.
Sorrel—*Rumex acetosa* L.
Southernpea—(see Cowpea).
Soybean—*Glycine max* (L.) Merr.
Spinach—*Spinacia oleracea* L.
Spinach, New Zealand—*Tetragonia tetragonioides* (Pall.) Ktze.
Squash—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poiret, and *C. maxima* Duchesne
Tomato—*Lycopersicon esculentum* Mill.
Tomato, husk—*Physalis pubescens* L.
Turnip—*Brassica rapa* L. subsp. *rapa*
Watermelon—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *lanatus*

§ 361.2 General restrictions on the importation of seed and screenings.

(a) No person shall import any agricultural seed, vegetable seed, or screenings into the United States unless the importation is in compliance with this part.

(b) Any agricultural seed, vegetable seed, or screenings imported into the United States not in compliance with this part shall be subject to exportation, destruction, disposal, or any remedial measures that the Administrator determines are necessary to prevent the dissemination into the United States of noxious weeds.

(c) Except as provided in § 361.7(b), coated or pelleted seed may enter the United States only if each lot of seed is accompanied by an officially drawn and sealed sample of seed drawn from the lot before the seed was coated or pelleted. The sample must be drawn in a manner consistent with that described in § 361.5 of this part.

(d) Except as provided in §§ 361.4(a)(3) and 361.7(c), screenings of all agricultural seed and vegetable seed are prohibited entry into the United States.

§ 361.3 Declarations and labeling.

(a) All lots of agricultural seed, vegetable seed, and screenings imported into the United States must be accompanied by a declaration from the importer of the seed or screenings. The declaration must state the kind, variety, and origin of each lot of seed or screenings and the use for which the seed or screenings are being imported.

(b) Each container of agricultural seed and vegetable seed imported into the United States for seeding (planting) purposes must be labeled to indicate the identification code or designation for the lot of seed; the name of each kind or kind and variety of agricultural seed or the name of each kind and variety of vegetable seed present in the lot in excess of 5 percent of the whole; and the designation ''hybrid'' when the lot contains hybrid seed. Kind and variety names used on the label shall conform to the kind and variety names used in the definitions of ''agricultural seed'' and ''vegetable seed'' in § 361.1. If any seed in the lot has been treated, each container must be further labeled, in type no smaller than 8 point, as follows:

(1) The label must indicate that the seed has been treated and provide the name of the substance or process used to treat the seed. Substance names used on the label shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name.

(i) Commonly accepted coined names are commonly recognized as names of particular substances, e.g., thiram, captan, lindane, and dichlone.

(ii) Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms ''mercury'' or ''mercurial'' may be used in labeling all types of mercurials.

(iii) Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

(2) If the seed has been treated with a mercurial or similarly toxic substance harmful to humans and vertebrate animals, the label must include a representation of a skull and crossbones and a statement indicating that the seed has been treated with poison. The skull and crossbones must be at least twice the size of the type used for the information provided on the label, and the poison warning statement must be written in red letters on a background of distinctly contrasting color. Mercurials and similarly toxic substances include the following:

Aldrin, technical
Demeton
Dieldrin
p-Dimethylaminobenzenediazo sodium sulfonate
Endrin

Ethion
Heptachlor
Mercurials, all types
Parathion
Phorate
Toxaphene
O-O-Diethyl-O-(isopropyl-4-methyl-6-pyrimidyl) thiophosphate
O,O-Diethyl-S-2-(ethylthio) ethyl phosphorodithioate

(3) If the seed has been treated with a substance other than one classified as a mercurial or similarly toxic substance under paragraph (b)(2) of this section, and the amount remaining with the seed is harmful to humans or other vertebrate animals, the label must indicate that the seed is not to be used for food, feed, or oil purposes. Any amount of any substance used to treat the seed that remains with the seed will be considered harmful when the seed is in containers of more than 4 ounces, except that the following substances will not be deemed harmful when present at a rate less than the number of parts per million (p/m) indicated:

Allethrin—2 p/m
Malathion—8 p/m
Methoxyclor—2 p/m
Piperonyl butoxide—20 p/m (8 p/m on oat and sorghum)
Pyrethrins—3 p/m (1 p/m on oat and sorghum)

(c) In the case of seed in bulk, the information required under paragraph (b) of this section shall appear in the invoice or other records accompanying and pertaining to such seed. If the seed is in containers and in quantities of 20,000 pounds or more, regardless of the number of lots included, the information required on each container under paragraph (b) of this section need not be shown on each container if each container has stenciled upon it or bears a label containing a lot designation and the invoice or other records accompanying and pertaining to such seed bear the various statements required for the respective seeds.

(d) Each container of agricultural seed and vegetable seed imported into the United States for cleaning need not be labeled to show the information required under paragraph (b) of this section if:

(1) The seed is in bulk;

(2) The seed is in containers and in quantities of 20,000 pounds or more, regardless of the number of lots involved, and the invoice or other records accompanying and pertaining to the seed show that the seed is for cleaning; or

(3) The seed is in containers and in quantities of less than 20,000 pounds, and each container carries a label that bears the words ''Seed for cleaning.''

§ 361.4 Inspection at the port of first arrival.

(a) All agricultural seed, vegetable seed, and screenings imported into the United States shall be made available for examination by an APHIS inspector at the port of first arrival and shall remain at the port of first arrival until released by an APHIS inspector. Lots of agricultural seed, vegetable seed, or screenings may enter the United States without meeting the sampling requirements of paragraph (b) of this section if the lot is:

(1) Seed that is not being imported for seeding (planting) purposes and the declaration required by § 361.3(a) states the purpose for which the seed is being imported;

(2) Seed that is being shipped in bond through the United States;

(3) Screenings from seeds of wheat, oats, barley, rye, buckwheat, field corn, sorghum, broomcorn, flax, millet, proso, soybeans, cowpeas, field peas, or field beans that are not being imported for seeding (planting) purposes and the declaration accompanying the screenings as required under § 361.2(a) indicates that the screenings are being imported for processing or manufacturing purposes;

(4) Seed that is being imported for sowing for experimental or breeding purposes, is not for sale, is limited in quantity to the amount indicated in column 3 of table 1 of § 361.5, and is accompanied by a declaration stating the purpose for which it is being imported (seed imported for increase purposes only will not be considered as being imported for experimental or breeding purposes); or

(5) Seed that was grown in the United States, exported, and is now returning to the United States, provided that the person importing the seed into the United States furnishes APHIS with the following documentation:

(i) Export documents indicating the quantity of seed and number of containers, the date of exportation from the United States, the distinguishing marks on the containers at the time of exportation, and the name and address of the United States exporter;

(ii) A document issued by a Customs or other government official of the country to which the seed was exported indicating that the seed was not admitted into the commerce of that country; and

(iii) A document issued by a Customs or other government official of the country to which the seed was exported indicating that the seed was not commingled with other seed after being exported to that country.

(b) Except as provided in §§ 361.5(a)(2) and 361.7, samples will be taken from all agricultural seed and vegetable seed imported into the United States for seeding (planting) purposes prior to being released into the commerce of the United States.

(1) Samples of seed will be taken from each lot of seed in accordance with § 361.5 to determine whether any seeds of noxious weeds listed in § 361.6(a) are present. If seeds of noxious weeds are present at a level higher than the tolerances set forth in § 361.6(b), the lot of seed will be deemed to be adulterated and will be rejected for entry into the United States for seeding (planting) purposes. Once deemed adulterated, the lot of seed must be:

(i) Exported from the United States;

(ii) Destroyed under the monitoring of an APHIS inspector;

(iii) Cleaned under APHIS monitoring at a seed-cleaning facility that is operated in accordance with § 361.8(a); or

(iv) If the lot of seed is adulterated with the seeds of a noxious weed listed in § 361.6(a)(2), the seed may be allowed entry into the United States for feeding or manufacturing purposes, provided the importer withdraws the original declaration and files a new declaration stating that the seed is being imported for feeding or manufacturing purposes and that no part of the seed will be used for seeding (planting) purposes.

(2) Seed deemed adulterated may not be mixed with any other seed unless the Administrator determines that two or more lots of seed deemed adulterated are of substantially the same quality and origin. In such cases, the Administrator may allow the adulterated lots of seed to be mixed for cleaning as provided in paragraph (b)(1)(iii) of this section.

(3) If the labeling of a lot of seed is false or misleading in any respect, the seed will be rejected for entry into the United States. A falsely labeled lot of seed must be:

(i) Exported from the United States;

(ii) Destroyed under the monitoring of an APHIS inspector; or

(iii) The seed may be allowed entry into the United States if the labeling is corrected under the monitoring of an APHIS inspector to accurately reflect the character of the lot of seed.

§ 361.5 Sampling of seeds.

(a) *Sample sizes.* As provided in § 361.4(b), samples of seed will be taken from each lot of seed being imported for seeding (planting) purposes to determine whether any seeds of noxious weeds listed in § 361.6(a) are present. The samples shall be drawn in the manner described in paragraphs (b) and

(c) of this section. Unused portions of samples of rare or expensive seeds will be returned by APHIS upon request of the importer.

(1) A minimum sample of not less than 1 quart shall be drawn from each lot of agricultural seed; a minimum sample of not less than 1 pint shall be drawn from each lot of vegetable seed, except that a sample of ¼ pint will be sufficient for a vegetable seed importation of 5 pounds or less. The minimum sample shall be divided repeatedly until a working sample of proper weight has been obtained. If a mechanical divider cannot be used or is not available, the sample shall be thoroughly mixed, then placed in a pile; the pile shall be divided repeatedly into halves until a working sample of the proper weight remains. The weights of the working samples for noxious weed examination for each lot of seed are shown in column 1 of table 1 of this section. If the lot of seed is a mixture, the following methods shall be used to determine the weight of the working sample:

(i) If the lot of seed is a mixture consisting of one predominant kind of seed or a group of kinds of similar size, the weight of the working sample shall be the weight shown in column 1 of table 1 of this section for the kind or group of kinds that comprises more than 50 percent of the sample.

(ii) If the lot of seed is a mixture consisting of two or more kinds or groups of kinds of different sizes, none of which comprises over 50 percent of the sample, the weight of the working sample shall be the weighted average (to the nearest half gram) of the weight shown in column 1 of table 1 of this section for each of the kinds that comprise the sample, as determined by the following method:

(A) Multiply the percentage of each component of the mixture (rounded off to the nearest whole number) by the sample sizes shown in column 1 of table 1 of this section;

(B) add all these products;

(C) total the percentages of all components of the mixtures; and

(D) divide the sum in paragraph (a)(1)(ii)(B) of this section by the total in paragraph (a)(1)(ii)(C) of this section.

(2) It is not ordinarily practical to sample and test small lots of seed offered for entry. The maximum sizes of lots of each kind of seed not ordinarily sampled are shown in column 2 of table 1 of this section.

(3) The maximum sizes of lots of each kind of seed allowed entry without sampling for sowing for experimental or breeding purposes as provided in § 361.4(a)(4) are shown in column 3 of table 1 of this section.

TABLE 1

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
VEGETABLE SEED:			
Artichoke	500	25	50
Asparagus	500	25	50
Asparagusbean	500	25	50
Bean		25	200
Garden	500	100	500
Lima	500	25	200
Runner	500	25	200
Beet	300	25	50
Broadbean	500	25	200
Broccoli	50	5	10
Brussels sprouts	50	5	10
Burdock, great	150	10	50
Cabbage	50	5	10
Cabbage, Chinese	50	5	10
Cabbage, tronchuda	100	5	10
Cantaloupe (see Melon)			
Cardoon	500	25	50
Carrot	50	5	10
Cauliflower	50	5	10
Celeriac	25	5	10
Celery	25	5	10
Chard, Swiss	300	25	50
Chicory	50	5	10
Chives	50	5	10
Citron	500	25	50
Collards	50	5	10
Corn, sweet	500	25	200
Cornsalad	50	5	10
Cowpea	500	25	200
Cress, garden	50	5	10
Cress, upland	35	5	10
Cress, water	25	5	10
Cucumber	500	25	50
Dandelion	35	5	10
Dill	50	5	10
Eggplant	50	5	10
Endive	50	5	10

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
Gherkin, West India	160	25	50
Kale	50	5	10
Kale, Chinese	50	5	10
Kale, Siberian	80	5	10
Kohlrabi	50	5	10
Leek	50	5	10
Lettuce	50	5	10
Melon	500	25	50
Mustard, India	50	25	100
Mustard, spinach	50	5	10
Okra	500	25	50
Onion	50	5	10
Onion, Welsh	50	5	10
Pak-choi	50	5	10
Parsley	50	5	10
Parsnip	50	5	10
Pea	500	25	200
Pepper	150	5	10
.			
Pumpkin	500	25	50
Radish	300	25	50
Rhubarb	300	5	10
Rutabaga	50	5	10
Sage	150	25	50
Salsify	300	25	50
Savory, summer	35	5	10
Sorrel	35	5	10
Soybean	500	25	200
Spinach	150	25	50
Spinach, New Zealand	500	25	50
Squash	500	25	50
Tomato	50	5	10
Tomato, husk	35	5	10
Turnip	50	5	10
Watermelon	500	25	50
AGRICULTURAL SEED:			
Agrotricum	500	100	500
Alfalfa	50	25	100
Alfilaria	50	25	100
Alyceclover	50	25	100
Bahiagrass	50	25	100
Barrelclover	100	25	100
Barley	500	100	500
Bean, adzuki	500	100	500
Bean, field	500	100	500
Bean, mung	500	100	500
Bean (see Velvetbean)			
Beet, field	500	100	500
Beet, sugar	500	100	1,000
Beggarweed	50	25	100
Bentgrass, colonial	2.5	25	100
Bentgrass, creeping	2.5	25	100
Bentgrass, velvet	2.5	25	100
Bermudagrass	10	25	100
Bermudagrass, giant	10	25	100
Bluegrass, annual	10	25	100
Bluegrass, bulbous	40	25	100
Bluegrass, Canada	5	25	100
Bluegrass, glaucantha	10	25	100
Bluegrass, Kentucky	10	25	100
Bluegrass, Nevada	10	25	100
Bluegrass, rough	5	25	100
Bluegrass, Texas	10	25	100
Bluegrass, wood	5	25	100
Bluejoint	5	25	100

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
Bluestem, big	70	25	100
Bluestem, little	50	25	100
Bluestem, sand	100	25	100
Bluestem, yellow	10	25	100
Bottlebrush-squirreltail	90	25	100
Brome, field	50	25	100
Brome, meadow	130	25	100
Brome, mountain	200	25	100
Brome, smooth	70	25	100
Broomcorn	400	100	500
Buckwheat	500	100	500
Buffalograss:			
(Burs)	200	25	100
(Caryopses)	30	25	100
Buffelgrass:			
(Fascicles)	66	25	100
(Caryopses)	20	25	100
Burclover, California:			
(In bur)	500	100	500
(Out of bur)	70	25	100
Burclover, spotted:			
(In bur)	500	100	500
(Out of bur)	50	25	100
Burnet, little	250	25	100
Buttonclover	70	25	100
Canarygrass	200	25	100
Canarygrass, reed	20	25	100
Carpetgrass	10	25	100
Castorbean	500	100	500
Chess, soft	50	25	100
Chickpea	500	100	500
Clover, alsike	20	25	100
Clover, arrowleaf	40	25	100
Clover, berseem	50	25	100
Clover, cluster	10	25	100
Clover, crimson	100	25	100
Clover, Kenya	20	25	100
Clover, Ladino	20	25	100
Clover, Lappa	20	25	100
Clover, large hop	10	25	100
Clover, Persian	20	25	100
Clover, red	50	25	100
Clover, rose	70	25	100
Clover, small hop (suckling)	20	25	100
Clover, strawberry	50	25	100
Clover, sub (subterranean)	250	25	100
Clover, white	20	25	100
Corn, field	500	100	1,000
Corn, pop	500	100	1,000
Cotton	500	100	500
Cowpea	500	100	500
Crambe	250	25	100
Crested dogtail	20	25	100
Crotalaria, lance	70	25	100
Crotalaria, showy	250	25	100
Crotalaria, slenderleaf	100	25	100
Crotalaria, striped	100	25	100
Crotalaria, Sunn	500	25	100
Crownvetch	100	25	100
Dallisgrass	40	25	100
Dichondra	50	25	100
Dropseed, sand	2.5	25	100
Emmer	500	100	500
Fescue, Chewings	30	25	100
Fescue, hair	10	25	100

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
Fescue, hard	20	25	100
Fescue, meadow	50	25	100
Fescue, red	30	25	100
Fescue, sheep	20	25	100
Fescue, tall	50	25	100
Flax	150	25	100
Galletagrass:			
(Other than caryopses)	100	25	100
(Caryopses)	50	25	100
Grama, blue	20	25	100
Grama, side-oats:			
(Other than caryopses)	60	25	100
(Caryopses)	20	25	100
Guar	500	25	100
Guineagrass	20	25	100
Hardinggrass	30	25	100
Hemp	500	100	500
Indiangrass, yellow	70	25	100
Indigo, hairy	70	25	100
Japanese lawngrass	20	25	100
Johnsongrass	100	25	100
Kenaf	500	100	500
Kochia, forage	20	25	100
Kudzu	250	25	100
Lentil	500	25	100
Lespedeza, Korean	50	25	100
Lespedeza, sericea or Chinese	30	25	100
Lespedeza, Siberian	30	25	100
Lespedeza, striate	50	25	100
Lovegrass, sand	10	25	100
Lovegrass, weeping	10	25	100
Lupine, blue	500	100	500
Lupine, white	500	100	500
Lupine, yellow	500	100	500
Manilagrass	20	25	100
Meadow foxtail	30	25	100
Medick, black	50	25	100
Milkvetch	90	25	100
Millet, browntop	80	25	100
Millet, foxtail	50	25	100
Millet, Japanese	90	25	100
Millet, pearl	150	25	100
Millet, proso	150	25	100
Molassesgrass	5	25	100
Mustard, black	20	25	100
Mustard, India	50	25	100
Mustard, white	150	25	100
Napiergrass	50	25	100
Needlegrass, green	70	25	100
Oat	500	100	500
Oatgrass, tall	60	25	100
Orchardgrass	30	25	100
Panicgrass, blue	20	25	100
Panicgrass, green	20	25	100
Pea, field	500	100	500
Peanut	500	100	500
Poa trivialis (see bluegrass, rough)			
Rape, annual	70	25	100
Rape, bird	70	25	100
Rape, turnip	50	25	100
Rape, winter	100	25	100
Redtop	2.5	25	100
Rescuegrass	200	25	100
Rhodesgrass	10	25	100
Rice	500	100	500

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
Ricegrass, Indian	70	25	100
Roughpea	500	100	500
Rye	500	100	500
Rye, mountain	280	25	100
Ryegrass, annual	50	25	100
Ryegrass, intermediate	80	25	100
Ryegrass, perennial	50	25	100
Ryegrass, Wimmera	50	25	100
Safflower	500	100	500
Sagewort, Louisiana	5	25	100
Sainfoin	500	100	500
Saltbush, fourwing	150	25	100
Seasame	70	25	100
Sesbania	250	25	100
Smilo	20	25	100
Sorghum	500	100	1,000
Sorghum almum	150	25	100
Sorghum-sudangrass hybrid	500	100	1,000
Sorgrass	150	25	100
Sourclover	50	25	100
Soybean	500	100	500
Spelt	500	100	500
Sudangrass	250	25	100
Sunflower	500	100	500
Sweetclover, white	50	25	100
Sweetclover, yellow	50	25	100
Sweet vernalgrass	20	25	100
Sweetvetch, northern	190	25	100
Switchgrass	40	25	100
Timothy	10	25	100
Timothy, turf	10	25	100
Tobacco	5	1	1
Trefoil, big	20	25	100
Trefoil, birdsfoot	30	25	100
Triticale	500	100	500
Vaseygrass	30	25	100
Veldtgrass	40	25	100
Velvetbean	500	100	500
Velvetgrass	10	25	100
Vetch, common	500	100	500
Vetch, hairy	500	100	500
Vetch, Hungarian	500	100	500
Vetch, Monantha	500	100	500
Vetch, narrowleaf	500	100	500
Vetch, purple	500	100	500
Vetch, woolypod	500	100	500
Wheat, common	500	100	500
Wheat, club	500	100	500
Wheat, durum	500	100	500
Wheat, Polish	500	100	500
Wheat, poulard	500	100	500
Wheat x Agrotricum	500	100	500
Wheatgrass, beardless	80	25	100
Wheatgrass, fairway crested	40	25	100
Wheatgrass, standard crested	50	25	100
Wheatgrass, intermediate	150	25	100
Wheatgrass, pubescent	150	25	100
Wheatgrass, Siberian	50	25	100
Wheatgrass, slender	70	25	100
Wheatgrass, streambank	50	25	100
Wheatgrass, tall	150	25	100
Wheatgrass, western	100	25	100
Wildrye, basin	80	25	100
Wild-rye, Canada	110	25	100
Wild-rye, Russian	60	25	100

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams) (1)	Maximum weight of seed lot not ordinarily sampled (pounds) (2)	Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) (3)
Zoysia Japonica (see Japanese lawngrass) Zoysia matrella (see Manilagrass)			

(b) *Method of sampling.* (1) When an importation consists of more than one lot, each lot shall be sampled separately.

(2) For lots of six or fewer bags, each bag shall be sampled. A total of at least five trierfuls shall be taken from the lot.

(3) For lots of more than six bags, five bags plus at least 10 percent of the number of bags in the lot shall be sampled. (Round off numbers with decimals to the nearest whole number, raising 0.5 to the next whole number.) Regardless of the lot size, it is not necessary to sample more than 30 bags.

(4) When the lot of seed to be sampled is comprised of seed in small containers that cannot practically be sampled as described in paragraph (b)(2) or (b)(3) of this section, entire unopened containers may be taken in sufficient number to supply a sample that meets the minimum size requirements of paragraph (a)(1) of this section.

(c) *Drawing samples.* Samples will not be drawn unless each container is labeled to show the lot designation and the name of the kind and variety of each agricultural seed, or kind and variety of each vegetable seed, appearing on the invoice and other entry papers, and a declaration has been filed by the importer as required under § 361.2(a). In order to secure a representative sample, an APHIS inspector will draw equal portions from evenly distributed parts of the quantity of seed to be sampled; the APHIS inspector, therefore, must be given access to all parts of that quantity.

(1) For free-flowing seed in bags or in bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used. When drawing more than one trierful of seed from a bag, a different path through the seed shall be used when drawing each sample.

(2) For non-free-flowing seed in bags or bulk that may be difficult to sample with a probe or trier, samples shall be obtained by thrusting one's hand into the seed and withdrawing representative portions. The hand shall be inserted in an open position with the fingers held closely together while the hand is being inserted and the portion withdrawn. When more than one handful is taken from a bag, the handfuls shall be taken from well-separated points.

(3) When more than one sample is drawn from a single lot, the samples may be combined into a composite sample unless it appears that the quantity of seed represented as a lot is not of uniform quality, in which case the separate samples shall be forwarded together, but without being combined into a composite sample.

(d) In most cases, samples will be drawn and examined by an APHIS inspector at the port of first arrival. The APHIS inspector may release a shipment if no contaminants are found and the labeling is sufficient. If contaminants are found or the labeling of the seed is insufficient, the APHIS inspector may forward the sample to the USDA Seed Examination Facility (SEF), Beltsville, MD, for analysis, testing, or examination. APHIS will notify the owner or consignee of the seed that samples have been drawn and forwarded to the SEF and that the shipment must be held intact pending a decision by APHIS as to whether the seed is within the noxious weed seed tolerances of § 361.6 and is accurately labeled. If the decision pending is with regard to the noxious weed seed content of the seed and the seed has been determined to be accurately labeled, the seed may be released for delivery to the owner or consignee under the following conditions:

(1) The owner or consignee executes with Customs either a Customs single-entry bond or a Customs term bond, as appropriate, in such amount as is prescribed by applicable Customs regulations;

(2) The bond must contain a condition for the redelivery of the seed or any part thereof upon demand of the Port Director of Customs at any time;

(3) Until the seed is approved for entry upon completion of APHIS' examination, the seed must be kept intact and not tampered with in any way, or removed from the containers except under the monitoring of an APHIS inspector; and

(4) The owner or consignee must keep APHIS informed as to the location of the seed until it is finally entered into the commerce of the United States.

§ 361.6 Noxious weed seeds.

(a) Seeds of the plants listed in paragraphs (a)(1) and (a)(2) of this section shall be considered noxious weed seeds.

(1) Seeds with no tolerances applicable to their introduction:

Aeginetia spp.
Ageratina adenophora (Sprengel) King & Robinson
Alectra spp.
Alternanthera sessilis (L.) R. Brown ex de Candolle
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Durieu)
Azolla pinnata R. Brown
Borreria alata (Aublet) de Candolle
Carthamus oxyacantha M. Bieberstein
Chrysopogon aciculatus (Retzius) Trinius
Commelina benghalensis L.
Crupina vulgaris Cassini
Cuscuta spp.
Digitaria abyssinica (=*D. scalarum*)
Digitaria velutina (Forsskal) Palisot de Beauvois
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes
Eichhornia azurea (Swartz) Kunth
Emex australis Steinheil
Emex spinosa (L.) Campdera
Galega officinalis L.
Heracleum mantegazzianum Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Raeuschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.
Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burman f.) B. L. Robinson

Mikania micrantha Humboldt, Bonpland, & Kunth
Mimosa invisa Martius
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Nassella trichotoma (Nees) Hackel ex Arechavaleta
Opuntia aurantiaca Lindley
Orobanche spp.
Oryza longistaminata A. Chevalier & Roehrich
Oryza punctata Kotschy ex Steudel
Oryza rufipogon Griffith
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Hochstetter ex Chiovenda
Pennisetum macrourum Trinius
Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
Prosopis alapataco R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosii Burkart
Prosopis denudans Bentham
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth
Prosopis palmeri S. Watson
Prosopis reptans Bentham var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott
Prosopis strombulifera (Lamarck) Bentham
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) Clayon (=*R. exaltata* (L.) L. f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aublet
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumacher) Stapf & Hubbard
Solanum torvum Swartz
Solanum viarum Dunal
Sparganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauvois

(2) Seeds with tolerances applicable to their introduction:

Acroptilon repens (L.) DC. (=*Centaurea repens* L.) (=*Centaurea picris*)
Cardaria draba (L.) Desv.
Cardaria pubescens (C. A. Mey.) Jarmol.
Convolvulus arvensis L.
Cirsium arvense (L.) Scop.
Elytrigia repens (L.) Desv. (=*Agropyron repens* (L.) Beauv.)
Euphorbia esula L.
Sonchus arvensis L.
Sorghum halepense (L.) Pers.

(b) The tolerance applicable to the prohibition of the noxious weed seeds listed in paragraph (a)(2) of this section shall be two seeds in the minimum amount required to be examined as shown in column 1 of table 1 of § 361.5. If fewer than two seeds are found in an initial examination, the shipment from which the sample was drawn may be entered. If two seeds are found in an initial examination, a second sample must be examined. If two or fewer seeds are found in the second examination, the shipment from which the samples were drawn may be entered. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be entered. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be entered.

(c) Any seed of any noxious weed that can be determined by visual inspection (including the use of transmitted light or dissection) to be within one of the following categories shall be considered inert matter and not counted as a weed seed:

(1) Damaged seed (other than grasses) with over one half of the embryo missing;

(2) Grass florets and caryopses classed as inert:

(i) Glumes and empty florets of weedy grasses;

(ii) Damaged caryopses, including free caryopses, with over one-half the root-shoot axis missing (the scutellum excluded);

(iii) Immature free caryopses devoid of embryo or endosperm;

(iv) Free caryopses of quackgrass (*Elytrigia repens*) that are 2 mm or less in length; or

(v) Immature florets of quackgrass (*Elytrigia repens*) in which the caryopses are less than one-third the length of the palea. The caryopsis is measured from the base of the rachilla.

(3) Seeds of legumes (*Fabaceae*) with the seed coats entirely removed.

(4) Immature seed units, devoid of both embryo and endosperm, such as occur in (but not limited to) the following plant families: buckwheat (*Polygonaceae*), morning glory (*Convolvulaceae*), nightshade (*Solanaceae*), and sunflower (*Asteraceae*).

(5) Dodder (*Cuscuta* spp.) seeds devoid of embryos and seeds that are ashy gray to creamy white in color are inert matter. Dodder seeds should be sectioned when necessary to determine if an embryo is present, as when the seeds have a normal color but are slightly swollen, dimpled, or have minute holes.

§ 361.7 Special provisions for Canadian-origin seed and screenings.

(a) In addition to meeting the declaration and labeling requirements of § 361.2 and all other applicable provisions of this part, all Canadian-origin agricultural seed and Canadian-origin vegetable seed imported into the United States from Canada for seeding (planting) purposes or cleaning must be accompanied by a certificate of analysis issued by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency. Samples of seed shall be drawn using sampling methods comparable to those detailed in § 361.5 of this part. The seed analyst who examines the seed at the laboratory must be accredited to analyze the kind of seed covered by the certificate.

(1) If the seed is being imported for seeding (planting) purposes, the certificate of analysis must verify that the seed meets the noxious weed seed tolerances of § 361.6. Such seed will not be subject to the sampling requirements of § 361.3(b).

(2) If the seed is being imported for cleaning, the certificate of analysis must name the kinds of noxious weed seeds that are to be removed from the lot of seed. Seed being imported for cleaning must be consigned to a facility operated in accordance with § 361.8(a).

(b) Coated or pelleted agricultural seed and coated or pelleted vegetable seed of Canadian origin may be imported into the United States if the seed was analyzed prior to being coated or pelleted and is accompanied by a certificate of analysis issued in accordance with paragraph (a) of this section.

(c) Screenings otherwise prohibited under this part may be imported from Canada if the screenings are imported for processing or manufacture and are consigned to a facility operating under a compliance agreement as provided by § 361.8(b).

(Approved by the Office of Management and Budget under control number 0579–0124)

§ 361.8 Cleaning of imported seed and processing of certain Canadian-origin screenings.

(a) Imported seed that is found to contain noxious weed seeds at a level higher than the tolerances set forth in § 361.6(b) may be cleaned under the

monitoring of an APHIS inspector. The cleaning will be at the expense of the owner or consignee.

(1) At the location where the seed is being cleaned, the identity of the seed must be maintained at all times to the satisfaction of the Administrator. The refuse from the cleaning must be placed in containers and securely sealed and identified. Upon completion of the cleaning, a representative sample of the seed will be analyzed by a registered seed technologist, an official seed laboratory, or by APHIS; if the seed is found to be within the noxious weed tolerances set forth in § 361.6(b), the seed may be allowed entry into the United States;

(2) The refuse from the cleaning must be destroyed under the monitoring of an APHIS inspector at the expense of the owner or consignee of the seed.

(3) Any person engaged in the business of cleaning imported seed may enter into a compliance agreement under paragraph (c) of this section to facilitate the cleaning of seed imported into the United States under this part.

(b) Any person engaged in the business of processing screenings who wishes to process screenings imported from Canada under § 361.7(c) that are otherwise prohibited under this part must enter into a compliance agreement under paragraph (c) of this section.

(c) A compliance agreement for the cleaning of imported seed or processing of otherwise prohibited screenings from Canada shall be a written agreement [1] between a person engaged in such a business, the State in which the business operates, and APHIS, wherein the person agrees to comply with the provisions of this part and any conditions imposed pursuant thereto. Any compliance agreement may be canceled orally or in writing by the APHIS inspector who is monitoring its enforcement whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons for the decision shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision to the Administrator, in writing, within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

[1] Compliance Agreement forms are available without charge from Permit Unit, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

§ 361.9 Recordkeeping.

(a) Each person importing agricultural seed or vegetable seed under this part must maintain a complete record, including copies of the declaration and labeling required under this part and a sample of seed, for each lot of seed imported. Except for the seed sample, which may be discarded 1 year after the entire lot represented by the sample has been disposed of by the person who imported the seed, the records must be maintained for 3 years following the importation.

(b) Each sample of vegetable seed and each sample of agricultural seed must be at least equal in weight to the sample size prescribed for noxious weed seed examination in table 1 of § 361.5.

(c) An APHIS inspector shall, during normal business hours, be allowed to inspect and copy the records.

(Approved by the Office of Management and Budget under control number 0579–0124)

§ 361.10 Costs and charges.

Unless a user fee is payable under § 354.3 of this chapter, the services of an APHIS inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost. The U.S. Department of Agriculture's provisions relating to overtime charges for an APHIS inspector's services are set forth in part 354 of this chapter. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with this part, other than for the services of the APHIS inspector during regularly assigned hours of duty and at the usual places of duty. All expenses incurred by the U.S. Department of Agriculture (including travel, per diem or subsistence, and salaries of officers or employees of the Department) in connection with the monitoring of cleaning, labeling, other reconditioning, or destruction of seed, screenings, or refuse under this part shall be reimbursed by the owner or consignee of the seed or screenings.

Done in Washington, DC, this 10th day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–24524 Filed 9–15–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 633

Water Bank Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final Rule.

SUMMARY: The Department of Agriculture Reorganization Act of 1994 authorized the establishment of the Natural Resources Conservation Service (NRCS) and transferred responsibility for the Water Bank Program (WBP) from the Agricultural Stabilization (ASCS) and Conservation Service to the NRCS, formerly the Soil Conservation Service (SCS). This final rule provides the process by which the WBP will be administered within the NRCS.

DATES: Effective date: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Misso (Program Manager), (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, because this rule merely reflects a statutory change in administrative responsibility, publication for public comment is unnecessary.

Environmental Evaluation

This regulatory action, which merely recognizes a transfer in administrative responsibilities, is categorically excluded by 7 CFR1b.3(a)(1). Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Water Bank Program 10.062.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0578–0013.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the affects of this rulemaking action on State, local, and tribal governments. This action does not compel the expenditure of $100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

The Agricultural Stabilization and Conservation Service (ASCS) issued the current regulations for implementation of WBP, and the regulations are codified at 7 CFR part 752. Pursuant to the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, the Natural Resources Conservation Service (NRCS) assumed responsibility for administering the WBP and this final rule establishes a new part (7 CFR part 633) for implementation of the WBP under NRCS. Under this rule, NRCS will administer agreements entered into by persons with ASCS and, as funds are made available, new agreements entered into by persons with NRCS. This final rule adopts most of the policies as found in 7 CFR part 752, except that the administration, enforcement, monitoring, and management of the program is now under the jurisdiction of the Chief, NRCS, or designee. NRCS believes that issuance of a final rule without a public comment period is appropriate because of the pending removal of 7 CFR part 752 and the need to maintain a regulatory framework for the program. More importantly, the changes made by this rule merely transfer administrative responsibilities. This final rule does not relieve any person of any obligation or liability incurred under 7 CFR part 752, nor otherwise deprive any person of any rights received or accrued under the provisions of 7 CFR part 752. Therefore, no person's rights shall be adversely impacted as a result of this action.

WBP was developed in accordance with the Water Bank Act, enacted in 1970. The purpose of the program is to conserve water, preserve and improve the condition of migratory waterfowl habitat and other wildlife resources, and secure other wildlife benefits through 10-year land use agreements with landowners and operators in important migratory waterfowl nesting and breeding areas.

The program operates primarily in the northern part of the Central flyway and the northern and southern parts of the Mississippi flyway, which are the major migratory water routes used by waterfowl. WBP also operates along other flyways in States where the program is authorized. NRCS currently administers WBP agreements in Arkansas, California, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Unlike other Federal wetland laws, the Water Bank Act defines wetlands in accordance with Circular 39, Wetlands of the United States, published by the Department of the Interior. WBP agreements encompass inland fresh areas (types 1 through 7) as described in Circular 39, and artificially developed inland fresh water areas that meet the description of inland fresh water areas (types 1 through 7).

List of Subjects in 7 CFR Part 633

Administrative practices and procedures, Contracts, Natural Resources, Technical assistance.

Accordingly 7 CFR Chapter VI is amended as follows:

A new part 633 is added to read as follows:

PART 633—WATER BANK PROGRAM

Sec.

Authority: 16 U.S.C. 1301–1311.

§ 633.1 Purpose and scope.

The regulations in this part set forth the policies, procedures, and requirements for the Water Bank Program (WBP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

§ 633.2 Definitions.

The following definitions shall be applicable to this part:

Adjacent land means land on a farm which adjoins designated types 1 through 7 wetlands and is considered essential for the protection of the wetland or for the nesting, breeding, or feeding of migratory waterfowl. Adjacent land need not be contiguous to the land designated as wetland, but cannot be located more than one quarter of a mile away.

Agreement means the document that specifies the obligations and rights of any person who has been accepted for participation in the WBP.

Annual payment means the consideration paid to a participant each year for entering an agreement with the NRCS under the WBP.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation plan means a written record of the land user's decision on the use and management of the wetland and adjacent areas covered by the agreement.

Cost-share payment means the payment made by the NRCS to achieve the protection of the wetland functions

and values of the agreement area in accordance with the conservation plan.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

Operator means the person who is in general control of the farming operations on the farm during the crop year.

Person means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a measure necessary or desirable to accomplish the desired program objectives.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861. The State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetlands mean the inland fresh areas defined under 16 U.S.C. 1302 and described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

Wetlands functions and values mean the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flooding;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

WBP means the Water Bank Program.

§ 633.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS will seek the agreement of the Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(c) The State Conservationist will consultation with the State Technical Committee, on program administration and related policy matters. No determination by the State Technical Committee shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(d) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, agreement management and monitoring, program implementation assistance, and to assure a solid technical foundation for the program.

(e) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies.

(f) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of enrollment across State boundaries, or for other goals of the WBP found in this part.

§ 633.4 Program requirements.

(a) *General.* Under the WBP, the NRCS will enter 10-year agreements with eligible persons who voluntarily cooperate in the protection of wetlands and associated lands. To participate in WBP, a person will agree to the implementation of a conservation plan, the effect of which is to protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the protection of wetland functions and values. Specific protection actions may be undertaken by the participant or other NRCS designee.

(b) *Participant eligibility.* To be eligible to participate in the WBP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought; or

(2) Have possession of the land by written lease over all designated acreage in the agreement for at least two years preceding the date of the agreement and will have possession over the all designated acreage for the agreement period.

(c) *Eligible land.* (1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful protection of wetland functions and values when considering the cost of entering the agreement and protection costs. Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(2) The following land is eligible for enrollment in the WBP:

(i) Privately owned inland fresh wetland areas of types 1 through 7.

(ii) Privately owned inland fresh wetland areas of types 1 through 7 which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or

(iii) Other privately owned land which is adjacent to or within one quarter mile of designated types 1 through 7 wetlands and which is determined by the State Conservationist to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(d) *Ineligible land.* The following land is not eligible for enrollment in the WBP:

(1) Converted wetlands if the conversion was in violation of 16 U.S.C. 3821 et seq.;

(2) Lands owned by an agency of the United States;

(3) Land which is set aside or diverted under any other program administered by the Department of Agriculture;

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with a Forest Management Plan which is included in the conservation plan and is approved by the State forester or equivalent State official;

(5) Lands where implementation of agreement practices would be futile due to on-site or off-site conditions; and

(6) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless:

(i) The new ownership was acquired by will or succession as a result of the death of the previous owner,

(ii) The land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any

Federal, State, or other agency having the right of eminent domain, or

(iii) The new owner operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period.

§ 633.5 Application procedures.

(a) Application for participation. To apply for enrollment, a person must submit an application for participation in the WBP.

(b) Preliminary agency actions. The NRCS must certify that the designated acreage that would be placed under an agreement constitutes a viable wetland unit, contains sufficient adjacent land to protect the wetland, and provides essential habitat for the nesting, breeding or feeding of migratory waterfowl.

(c) Where funds allocated to the State do not permit accepting all requests which are filed, the State Conservationist, in consultation with the State Technical Committee, may establish ranking criteria and limit the approval of requests for agreements in accordance with the ranking scheme. Any ranking scheme shall consider estimated costs of the agreement, costs of protection, availability of matching funds, significance of wetland functions and values, and estimated success of protection measures.

(d) The NRCS may place higher priority on certain geographic regions of the State where the protection of wetlands may better achieve NRCS State and regional goals and objectives.

(e) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful protection of the wetlands and those adjacent landowners are unwilling to participate.

§ 633.6 Program participation requirements.

(a) *WBP Agreement.* An agreement shall be executed for each participating farm. The agreement shall be signed by the owner of the designated acreage and any other person who, as landlord, tenant, or share cropper, will share in the payment or has an interest in the designated acreage. There may be more than one agreement for a farm.

(b) *Agreement period.* The agreement period shall:

(1) Be for a term of 10 years;

(2) Become effective on January 1 of the year in which the agreement is approved except that the agreement shall become effective on January 1 of the next succeeding year in cases where, at the time the agreement is approved, the NRCS determines that the agreement signers will be unable to comply with the provisions of paragraph (c) of this section in the year in which such agreement is approved.

(c) *Agreement terms and conditions.* The acreage designated under an agreement shall:

(1) Be maintained for the agreement period in a manner which will preserve, restore, or improve the wetland character of the land;

(2) Not be drained, burned, filled, or otherwise used in a manner which would destroy the wetland character of the acreage, except that the provisions of this paragraph shall not prohibit the carrying out of management practices which are specified in a conservation plan for the farm;

(3) Not be used as a dumping area for draining other wetlands, except where the State Conservationist determines that such use is consistent with the sound management of wetlands and is specified in the conservation plan;

(4) Not be used as a source of irrigation water;

(5) Not be used for the harvesting of a crop;

(6) Not be hayed except for during periods of severe drought and only under conditions prescribed by the State Conservationist in consultation with the Secretary of the Interior or his designee; and

(7) Not be grazed, except as may be specified in the conservation plan.

§ 633.7 Annual payments.

(a) Person on the farm having an interest in the designated acreage, including tenants and sharecroppers, shall be eligible for an annual payment in the manner agreed upon by them as representing their respective contributions to compliance with the agreement. The State Conservationist shall not approve an agreement if it is determined that the proposed division of payment is not fair and equitable.

(b) The annual per acre payment rates for wetlands and for adjacent land shall be determined for each county by the State Conservationist, based on recommendations of the State Technical Committee.

(c) Maximum payments. In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish uniform maximum annual payment limits for agreements within a State or for geographic areas within a State.

(d) Preliminary estimates of annual payments. Upon request prior to filing an application for enrollment, a person may be apprised of the maximum annual payment rates.

(e) Adjustment of annual rates.

(1) The State Conservationist, in consultation with the State Technical Committee, shall reexamine the payment rates with respect to each agreement at the beginning of the fifth year of any ten-year initial or renewal period and before the renewal expires.

(2) An adjustment in the payment rates shall be made for any initial or renewal period taking into consideration the current land rental rates and crop values in the area. No adjustment shall be made in a payment rate which will result in a reduction of an annual payment rate from the rate which is specified in the initial or renewal agreement.

(3) The rate or rates of annual payments may be increased if the program participant permits access by the general public to the designated acreage for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

§ 633.8 Cost-share payments.

(a) In addition to annual payments, the NRCS may share the cost with program participants of protecting the wetland functions and values of the enrolled land as provided in the conservation plan. The NRCS may pay up to 75 percent of such costs.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the program participant or other designee.

(c) A program participant may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the program participant receive an amount which exceeds 100 percent of the total actual cost of the practices.

§ 633.9 Conservation plan.

(a) The program participant, with assistance from NRCS and in consultation with the Conservation District, shall prepare a conservation plan for the acreage designated under an agreement.

(b) The conservation plan is the basis for the agreement and is incorporated

therein. It includes a schedule of conservation treatment and management required to protect and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement.

(c) Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

§ 633.10 Modifications.

The NRCS may approve modifications to the agreement or associated conservation plan after consultation with the Conservation District. Any modification must meet WBP program objectives, and must be in compliance with this part.

§ 633.11 Transfer of interest in an agreement.

(a) If the ownership or operation of a farm changes in such a manner that the agreement no longer contains the signatures of the persons required by § 633.6(a) to sign the agreement, the agreement shall be modified to reflect the new interested persons and new divisions of payments.

(b) If such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated and all unearned payments shall be forfeited or refunded.

(c) The annual payment for the year in which the change of ownership or operation occurs shall not be considered to have been earned unless the designated acreage is continued in the program and there is compliance with the agreement for the full agreement year.

(d) The signatories to the agreement prior to the change of ownership or operation shall be jointly and severally responsible for refunding the unearned payments previously made.

§ 633.12 Termination of agreements.

(a) The State Conservationist may, by mutual agreement with the parties to the agreement, consent to the termination of the agreement where:

(1) The parties to the agreement are unable to comply with the terms of the agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the agreement would work a severe hardship on the parties to the agreement; or

(3) Termination of the agreement would be in the public interest.

(b) If an agreement is terminated in accordance with the provisions of this section, the annual payment for the year in which the agreement is terminated shall not be considered to have been earned unless there is compliance with the terms and conditions of the agreement for the entire calendar year.

§ 633.13 Violations and remedies.

(a) In the event of a violation of an agreement or any associated conservation plan, the parties to the agreement shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) In addition to any and all legal and equitable remedies as may be available to the NRCS under applicable law, the NRCS may withhold any annual or cost-share payments owing to the parties of the agreement at any time there is a material breach of the agreement or any conservation plan. Such withheld funds may be used to offset costs incurred by the NRCS in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(c) The NRCS shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 633.14 Debt collection.

Any debts arising under this program are governed with respect to their collection by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701) and the regulations found in 4 CFR chapter II.

§ 633.15 Payments not subject to claims.

(a) Any payments due any person shall be determined and allowed without regard to State land and without regard to any claim or lien against any crop, or proceeds thereof, which may be asserted by any creditor, except as provided in paragraph (b) of this section.

(b) The regulations governing setoffs and withholdings, in part 13 of this title, as amended, shall be applicable to this program.

§ 633.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 633.17 Appeals.

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 of this chapter.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

§ 633.18 Scheme and device.

(a) If it is determined by the NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of an annual payment or payments for cost-share practices for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A program participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed at Washington, D.C. on September 4, 1997.

Gary R. Nordstrom,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97–24486 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–077–1]

Brucellosis in Cattle; State and Area Classifications; Kentucky

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kentucky from Class A to Class Free. We have determined that Kentucky meets the standards for Class Free status. This action relieves certain restrictions on

the interstate movement of cattle from Kentucky.

DATES: Interim rule effective September 16, 1997. Consideration will be given only to comments received on or before November 17, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–077–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–077–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Kentucky was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Kentucky, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Kentucky from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Kentucky.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Kentucky.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Kentucky from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Kentucky, as well as buyers and importers of cattle from this State.

There are an estimated 52,000 cattle herds in Kentucky that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $3 per head.

Therefore, we believe that changing the brucellosis status of Kentucky will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding ''Kentucky,'' immediately after ''Iowa,''.

3. In § 78.41, paragraph (b) is amended by removing ''Kentucky,''.

Done in Washington, DC, this 4th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–24435 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct and Employee Restrictions and Responsibilities

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) regulations currently designate the Deputy General Counsel as the Designated Agency Ethics Official (DAEO). The Agency has now appointed a different official as the DAEO and has determined that a regulation is not required to implement this appointment. This amendment eliminates the paragraph that formerly designated the Deputy General Counsel as the DAEO, and amends a paragraph which identified the Deputy General Counsel as also serving as the Agency Standards of Conduct Counselor to now identify the DAEO as serving that role.

DATES: This rule becomes effective September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Robinson S. Nunn, Chief Counsel for Ethics, (202) 205–6867.

SUPPLEMENTARY INFORMATION: The following amendments will be made to 13 CFR Part 105:

Section 105.402 Standards of Conduct Counselors

(a) Replaces ''Deputy General Counsel'' with ''Designated Agency Ethics Official, as appointed by the Administrator,'' and eliminates reference to the Associate General Counsel for General Law (AGC) as an Assistant Standards of Conduct Counselor.

Section 105.403 Designated Agency Ethics Officials

Strikes (a) in full, and makes the existing text of (b) the only text under Section 105.403.

This final rule reflects an internal policy change resulting from a March 1997 reorganization in the Office of General Counsel and must be effective immediately. Therefore, SBA is publishing the rule without opportunity for prior public comment.

Compliance with Executive Order 12612, 12778, and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* And the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

SBA certifies the following:

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, this final rule does not have a significant economic impact on a substantial number of small entities.

This final rule does *not* constitute a significant regulatory action for purposes of Executive Order 12866, since the change is not likely to result in an annual effect on the economy of $100 million or more.

This final rule does not impose additional reporting or record keeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

This final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 1 of Executive Order 12778.

List of Subjects in 13 CFR Part 105

Employee restrictions and responsibilities, Small Business Administration, Standards of conduct.

Accordingly, SBA is amending Part 105, Title 13 of the Code of Federal Regulations as follows:

PART 105—[AMENDED]

1. The authority citation for Part 105 continues to read as follows:

Authority: 5 U.S.C. 7301; 15 U.S.C. 634, 637(a)(18) and (a)(19), 642 and 645(a).

§ 105.402 [Amended]

2. Section 105.402(a) is amended by removing ''Deputy General Counsel'' and adding in its place, ''Designated Agency Ethics Official, as appointed by the Administrator,'' in the first sentence, and by changing the second sentence to read as follows: ''Assistant Standards of Conduct Counselors may be designated by the Standards of Conduct Counselor.''

§ 105.403 [Amended]

3. Section 105.403(a) is removed in full. Existing § 105.403(b) is redesignated as § 105.403.

Aida Alvarez,

Administrator.

[FR Doc. 97–24507 Filed 9–15–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–48–AD; Amendment 39–10132; AD 97–19–11]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that currently requires revising the Limitations Section of the Airplane Flight Manual (AFM) to provide the flight crew with procedures to check the travel range of the aileron. That AD also requires inspection for damage of the shear pins of the aileron flutter damper and aileron hinge fittings, and various follow-on actions. This amendment adds a requirement for accomplishment

of an installation that eliminates the need for the AFM revision. This amendment also adds airplanes to the applicability of the existing AD. This amendment is prompted by reports of failure of shear pins in the aileron flutter damper. The actions specified by this AD are intended to prevent damage to the aileron hinge fittings due to failed shear pins, and consequent reduced controllability of the airplane.

DATES: Effective October 21, 1997.

The incorporation by reference of Canadair Service Bulletin S.B. 601R–27–065, dated September 16, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of October 21, 1997.

The incorporation by reference of Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 1996 (60 FR 65521, December 20, 1995).

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

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (568) 258–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–26–07, amendment 39–9465 (60 FR 65521, December 20, 1995), which is applicable to certain Bombardier Model CL–600–2B19 series airplanes, was published in the **Federal Register** on April 15, 1997 (62 FR 18302). The action proposed to continue to require a revision to the Limitations Section of the Airplane Flight Manual (AFM) to provide the flight crew with procedures to check the travel range of the aileron. It also proposed to continue to require inspection for damage of the shear pins of the aileron flutter damper and aileron hinge fittings, and various follow-on actions. In addition, the action proposed to add a requirement for accomplishment of an installation that eliminates the need for the AFM revisions, and to add airplanes to the applicability of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 41 Bombardier Model CL–600–2B19 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–26–07 take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $24,600, or $600 per airplane.

The new actions that are required in this AD action will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $17,220, or $420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9465 (60 FR 65521, December 20, 1995), and by adding a new airworthiness directive (AD), to read as follows:

97–19–11 Bombardier, Inc. (Formerly Canadair): Amendment 39–10132. Docket 97–NM–48–AD. Supersedes AD 95–26–07, Amendment 39–9465.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7134 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 request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aileron hinge fittings due to failure of the shear pins, and

consequent reduced controllability of the airplane, accomplish the following:

Restatement of Actions Required by AD 95–26–07

(a) For airplanes having serial numbers 7003 through 7079 inclusive: Within 7 days after January 4, 1996 (the effective date of AD 95–26–07, amendment 39–9465), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

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

Aileron—Check travel range (to approx 1/2 travel) using each hydraulic system in turn, with the other hydraulic systems depressurized.''

Note 2: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45, dated September 7, 1995, or Temporary Revision RJ/45–2, dated April 30, 1996, in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45 or RJ/45–2.

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

(b) For airplanes having serial numbers 7003 through 7079 inclusive: Perform a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995, at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 7003 through 7054 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 30 days after January 4, 1996.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 400 flight hours after January 4, 1996.

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

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

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

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

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

New Actions Required by this AD

(f) For airplanes having serial numbers 7080 through 7134 inclusive: Within 7 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

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

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

Note 4: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45–2, dated April 30, 1996, in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45–2.

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

(g) For airplanes having serial numbers 7003 through 7134 inclusive: Within 18 months after the effective date of this AD, install redesigned aileron flutter damper shear pins and shear links, aileron flutter dampers, pivots, and new shear link assemblies; in accordance with Canadair Service Bulletin S.B. 601R–27–065, dated September 16, 1996. Accomplishment of this installation constitutes terminating action for the AFM revisions required by paragraphs (a) and (f) of this AD.

(h) As of the effective date of this AD, no person shall install an aileron flutter damper assembly, part number 600–10179–1, on any airplane.

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(j) 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.

(k) The inspections, removal, and repair shall be done in accordance with

[Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. The incorporation by reference of that document was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 4, 1996 (60 FR 65521, December 20, 1995). The installation shall be done in accordance with Canadair Service Bulletin S.B. 601R–27–065, dated September 16, 1996. The incorporation by reference of this document is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of either document may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on October 21, 1997.

Issued in Renton, Washington, on September 9, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24341 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

The Army Privacy Program

AGENCY: Department of the Army, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Army deleted an exempt Privacy Act system of records notice on July 7, 1997 at 62 FR 36266. This action deletes the corresponding exemption rule from 32 CFR part 505.
EFFECTIVE DATE: September 16, 1997.
FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.
SUPPLEMENTARY INFORMATION:
Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.
Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.
Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

List of Subjects in 32 CFR part 505

Privacy.

Accordingly, 32 CFR part 505 is amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 505.5 is amended by removing and reserving paragraph (e)(20) as follows:

§ 505.5 Exemptions.

* * * * *

(e) * * *

(20) [Reserved].

* * * * *

Dated: September 11, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 97–24534 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 185–0047a FRL–5888–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Northern Sierra Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules for Northern Sierra Air Quality Management District (NSAQMD or District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X) and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA of the Act). These revisions consist of administrative and minor changes to a wide range of rules that have been previously incorporated into the federally approved SIP. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.
EFFECTIVE DATE: This action is effective on November 17, 1997 unless adverse or critical comments are received by October 16, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.
ADDRESSES: Comments must be submitted to Cynthia G. Allen at the Region IX office listed below. Copies of the rule revisions are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Northern Sierra Air Quality Management District, 540 Searls Avenue, Nevada City, CA 95959.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: NSAQMD Rule 101, Title; Rule 102, Definitions; Rule 202, Visible Emissions; Rule 203, Exceptions to Rule 202; Rule 204, Wet Plumes Rule 206, Incinerator Burning; Rule 207, Particulate Matter; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel Steam Generator Facility; Rule 210, Specific Contaminants; Rule 212, Process Weight Table; Rule 213, Storage of Gasoline Products; Rule 221, Reduction of Animal Matter; Rule 222, Abrasive Blasting; Rule 225, Compliance; Rule 300, General Definitions; Rule 301, Compliance; Rule 313, Burn Day; Rule 314, Minimum Drying Times; Rule 315, Burning Management Requirements; and Rule 317, Mechanized Burners Requirements. These rules were submitted by the California Air Resources Board to EPA on October 28, 1996.

I. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that listed Nevada, Plumas and Sierra Counties as ''unclassifiable/attainment''. 43 FR 8964, 40 CFR 81.305. In response to section 110(a) of the Act and other requirements, the Nevada, Plumas and Sierra Air Pollution Control Districts (APCDs) submitted many rules which EPA approved into the SIP. On September 11, 1991, California consolidated the Nevada, Plumas, and

Sierra County APCDs within the NSAQMD. Also on September 11, 1991, June 10, 1992, May 11, 1994, and August 14, 1996, the NSAQMD adopted many rules that reformatted and consolidated rules from the three subsumed air districts. These revised rules consolidate the District rules into a single set of regulations applicable throughout the NSAQMD.

This document addresses EPA's direct-final action for the following NSAQMD rules: Rule 101, Title; Rule 102, Definitions; Rule 202, Visible Emissions; Rule 203, Exceptions to Rule 202; Rule 204, Wet Plumes; Rule 206, Incinerator Burning; Rule 207, Particulate Matter; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel Steam Generator Facility; Rule 212, Process Weight Table; Rule 213, Storage of Gasoline; Rule 221, Reduction of Animal Matter; Rule 222, Abrasive Blasting; Rule 223, Enforcement; Rule 225, Compliance; Rule 300, General Definitions; Rule 301, Compliance; Rule 313, Burn Day; Rule 314, Minimum Drying Times; Rule 315, Burning Management Requirements; Rule 316, Burn Plan Preparation; and Rule 317, Mechanized Burners Requirements.

These rules were adopted by NSAQMD on September 11, 1991 and May 11, 1994 and submitted by the State of California for incorporation into its SIP on October 28, 1996. These rules were found to be complete on December 19, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V [1] and are being finalized for approval into the SIP. These rules and their predecessors were originally adopted as part of NSAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for these rules.

II. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.[2]

EPA previously reviewed many rules from the Nevada, Plumas and Sierra County Air Pollution Control Districts and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those rules that are being superseded and/or deleted [3] by today's action are as follows:

Nevada County Air Pollution Control District

- Rule 101, Title (submitted 4/10/75)
- Rule 102, Definitions (submitted 4/10/75, 6/6/77)
- Rule 103, Enforcement (submitted 6/6/77)
- Rule 104, No Title (submitted 6/6/77)
- Rule 202, Visible Emissions (submitted 4/10/75)
- Rule 203, Exceptions (submitted 4/10/75, 6/6/77, 2/21/72)
- Rule 204, Wet Plumes (submitted 4/10/75, 2/21/72)
- Rule 206, Incinerator Burning (submitted 4/10/75, 6/6/77)
- Rule 207, Particulate Matter (submitted 10/15/79)
- Rule 208, Orchard or Citrus Heaters (submitted 4/10/75)
- Rule 209, Fossil Fuel-Steam Separator Facility (submitted 4/10/75)
- Rule 210, Specific Contaminant (submitted 10/15/79)
- Rule 214, Reduction of Animal Matter (submitted 4/10/75)
- Rule 216, Abrasive Blasting (submitted 6/6/77)
- Rule 218, Compliance Tests (submitted 10/15/79)
- Rule 305, Permit Validity (submitted 4/10/75)
- Rule 306, No-Burn Days (submitted 10/15/79)
- Rule 308, Burning Reports (submitted 4/10/75)
- Rule 309, Amount Burned Daily (submitted 4/10/75)
- Rule 310, Approved Ignition Devices (submitted 4/10/75)
- Rule 311, Restricted Burning Days (submitted 4/10/75)
- Rule 312, Wind Direction (submitted 4/10/75)
- Rule 313, Minimum Drying Times (submitted 4/10/75)
- Rule 315, Preparation of Material to be Burned (submitted 4/10/75)
- Rule 405, Separation of Emissions (submitted 4/10/75)
- Rule 406, Combination of Emissions (submitted 4/10/75)
- Rule 407, Circumvention (submitted 6/6/77)
- Rule 408, Source Recordkeeping and Reporting (submitted 4/10/75)
- Rule 409, Public Records (submitted 6/6/77)
- Rule 507, Provision of Sampling and Testing Facilities (submitted 6/6/77)

Plumas County Air Pollution Control District

- Rule 101, Title (submitted 1/10/75)
- Rule 102, Definitions (submitted 1/10/75, 6/6/77)
- Rule 202, Visible Emissions (submitted 1/10/75)
- Rule 203, Exceptions (submitted 6/22/81)
- Rule 204, Wet Plumes (submitted 1/10/75)
- Rule 206, Incinerator Burning (submitted 1/10/75, 6/6/77)
- Rule 207, Particulate Matter (submitted 6/6/77)
- Rule 208, Orchard or Citrus Heaters (submitted 6/6/77)
- Rule 209, Fossil Fuel-Steam Generator Facility (1/10/75)
- Rule 214, Reduction of Animal Matter (submitted 1/10/75)
- Rule 215, Abrasive Blasting (submitted 6/6/77)
- Rule 216, Enforcement (submitted 6/6/77)
- Rule 216–50, Visible Emissions (submitted 1/10/75)
- Rule 216–51, Exceptions to Rule 50 (submitted 1/10/75)
- Rule 304, Range Improvement Burning (submitted 6/22/81)
- Rule 305, Forest Management Burning (submitted 6/22/81)
- Rule 311, Recreational Activity (submitted 6/22/81)
- Rule 313, No Burn Day (submitted 6/22/81)
- Rule 314, Burning Permits (submitted 6/22/81)
- Rule 315, Minimum Drying Times (submitted 6/22/81)
- Rule 316, Burning Management (submitted 6/22/81)
- Rule 318, Enforcement Responsibility (submitted 6/22/81)
- Rule 319, Penalty (submitted 6/22/81)
- Rule 405, Separation of Emissions (submitted 1/10/75)
- Rule 406, Combination of Emissions (submitted 1/10/75)
- Rule 510, Separation of Emissions (submitted 6/22/81)
- Rule 511, Combination of Emissions (submitted 6/22/81)
- Rule 512, Circumvention (submitted 6/22/81)
- Rule 513, Source Recordkeeping (submitted 6/22/81)

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Listed rules are superseded unless designated as deleted.

- Rule 514, Public Records and Trade Secrets (submitted 6/22/81)
- Rule 515, Provision of Sampling and Testing Facilities (submitted 6/22/81)

Sierra County Air Pollution Control District

- Rule 101, Title (submitted 1/10/75)
- Rule 102, Definitions (submitted 1/10/75, 6/6/77)
- Rule 202, Visible Emissions (submitted 1/10/75)
- Rule 203, Exceptions (submitted 6/22/81)
- Rule 204, Wet Plumes (submitted 1/10/75)
- Rule 206, Incinerator Burning (submitted 1/10/75)
- Rule 207, Particulate Matter (submitted 5/23/79)
- Rule 208, Orchard or Citrus Heaters (submitted 6/6/77)
- Rule 209, Fossil Fuel Steam Generator Facility (submitted 1/10/75)
- Rule 210, Specific Contaminants (submitted 5/23/79)
- Rule 211, Process Weight Per Hour (submitted 5/23/79)
- Rule 212, Process Weight Table (submitted 1/10/75)
- Rule 213, Storage of Petroleum Products (submitted 1/10/75)
- Rule 214, Reduction of Animal Matter (submitted 1/10/75)
- Rule 215, Abrasive Blasting (submitted 6/6/77)
- Rule 216, Enforcement (submitted 6/6/77)
- Rule 218, Compliance Tests (submitted 5/23/79)
- Rule 303, Agricultural Burning (submitted 6/22/81)
- Rule 304, Range Improvement Burning (submitted 6/22/81)
- Rule 305, Forest Management Burning (submitted 6/22/81)
- Rule 311, Recreational Activity (submitted 6/22/81)
- Rule 313, No Burn Day (submitted 6/22/81)
- Rule 314, Burning Permits (submitted 6/22/81)
- Rule 315, Minimum Drying Times (submitted 6/22/81)
- Rule 316, Burning Management (submitted 6/22/81)
- Rule 318, Enforcement Responsibility (submitted 6/22/81)
- Rule 319, Penalty (submitted 6/22/81)
- Rule 405, Separation of Emissions (submitted 1/10/75)
- Rule 406, Combination of Emissions (submitted 1/10/75)
- Rule 510, Separation of Emissions (submitted 6/22/81)
- Rule 511, Combination of Emissions (submitted 6/22/81)
- Rule 512, Circumvention (submitted 6/22/81)
- Rule 513, Source Recordkeeping (submitted 6/22/81)
- Rule 514, Public Records and Trade Secrets (submitted 6/22/81)
- Rule 515, Provision of Sampling and Testing Facilities (submitted 6/22/81)

EPA has evaluated the consolidated NSAQMD rules submitted in October 1996 and compared them to the rules currently incorporated in the SIP. In all cases the rules have been reformatted and changed editorially. In some cases there have also been minor substantive improvements. For example, where the three subsumed air districts had slightly different requirements for similar sources, the consolidated rule now applies to the most stringent of the requirements to the entire area. In no case does this action represent a relaxation of any requirement.

The NSAQMD rules being approved by this action to revise the SIP include:

- Rule 101, Title
- Rule 102, Definitions
- Rule 202, Visible Emissions
- Rule 203, Exceptions to Rule 202
- Rule 204, Wet Plumes
- Rule 206, Incinerator Burning
- Rule 207, Particulate Matter
- Rule 208, Orchard or Citrus Heaters
- Rule 209, Fossil Fuel Steam Generator Facility
- Rule 210, Specific Contaminants
- Rule 212, Process Weight Table
- Rule 213, Storage of Gasoline Products
- Rule 221, Reduction of Animal Matter
- Rule 222, Abrasive Blasting
- Rule 225, Compliance
- Rule 300, General Definitions
- Rule 301, Compliance
- Rule 313, Burn Day
- Rule 314, Minimum Drying Times
- Rule 315, Burning Management Requirements
- Rule 316, Burn Plan Preparation
- Rule 317, Mechanized Burners Requirements

Other NSAQMD rules submitted with these rules on October 28, 1996, will be acted on separately because they involve technical issues and require more detailed review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 17, 1997, unless, by October 16, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 17, 1997.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Reform Act

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 22, 1997.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (26)(ix)(B) and (26)(xvi)(E), (27)(vii)(C), (39)(viii)(D), (39)(ix)(C), (39)(x)(C), and (246) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(26) * * *

(ix) * * *

(B) Previously approved and now deleted, Rule 102.

* * * * *

(xvi) * * *

(E) Previously approved and now deleted, Rule 102.

* * * * *

(27) * * *

(vii) * * *

(C) Previously approved and now deleted, Rule 102.

* * * * *

(39) * * *

(viii)* * *

(D) Previously approved and now deleted, Rule 102.

(ix) * * *

(C) Previously approved and now deleted, Rule 102.

(x) * * *

(C) Previously approved and now deleted, Rule 102.

* * * * *

(246) New and amended regulations for the following APCDs were submitted on October 28, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Northern Sierra Air Quality Management District.

(*1*) Rules 101, 202, 203, 204, 206, 207, 208, 209, 210, 221, 222, 223, 225, 300, 301, 314, 315, and 317, adopted on September 11, 1991, Rule 102 adopted on May 11, 1994, Rule 313 adopted on June 10, 1992, and Rule 316 adopted on August 14, 1996.

[FR Doc. 97–24419 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 167–0036a; FRL–5888–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern emergency episode rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate one rule into the federally approved SIP and remove fourteen from the SIP. The intended effect of approving this rule is to update the episode criteria and to eliminate redundant reporting requirements in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittal, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on November 17, 1997 unless adverse or critical comments are received by October 16, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the rule and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. A copy of the submitted rule is available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT:
Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP includes SCAQMD Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on January 31, 1996. The rules being removed from the SIP are SCAQMD Rule 702, Definitions, Rule 703, Episode Criteria, Rule 704, Episode Declaration, Rule 705, Termination of Episodes, Rule 706, Episode Notification, Rule 707, Radio Communication System, Rule 708, Plans, Rule 708.1, Stationary Sources Required to File Plans, Rule 708.2, Content of Stationary Source Curtailment Plans, Rule 708.3, Transportation Management Plans, Rule 708.4, Procedural Requirements for Plans, Rule 709, First Stage Episode Actions, Rule 710, Second Stage Episode Actions, Rule 711, Third Stage Episode Actions, Rule 712, Sulfate Episode Actions, Rule 713, Interdistrict Coordination, Rule 714, Source Inspections, and Rule 715, Burning of Fossil Fuel on Episode Days.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the South Coast Air Quality Management District. 43 FR 8964, 40 CFR 81.305. The reqirements for the Prevention of Air Pollution Emergency Episodes for sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and particulate matter are located in 40 CFR part 51, subpart H. These requirements include provisions for classification of regions for episodes plans, significant harm levels, contingency plans and re-evaluation of episode plans. SCAQMD previously adopted Rules 701–715 in response to these reqirements. SCAQMD Rule 701 has now been revised to include all of the requirements previously found in these Rules.

Rule 701 was adopted by SCAQMD on September 8, 1995 and submitted by the State of California for incorporation into its SIP on January 31, 1996. This rule was found to be complete on April 2, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP.

The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a Emergency Episode rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.

Those rules that are being rescinded by today's action are listed below. EPA previously approved all these rules into the SIP.

- Rule 702, Definitions, submitted 08/15/80 and 04/23/80
- Rule 703, Episode Criteria, submitted 04/23/80
- Rule 704, Episode Declaration, submitted 04/23/80
- Rule 705, Termination of Episodes, submitted 04/23/80
- Rule 706, Episode Notification, submitted 04/23/80
- Rule 707, Radio Communication System, submitted 08/15/80
- Rule 708, Plans, submitted 08/15/80
- Rule 708.1, Stationary Sources Required to File Plans, 06/01/77
- Rule 708.2, Content of Stationary Source Curtailment Plans, 11/04/77
- Rule 708.3, Transportation Management Plans, submitted 11/08/82
- Rule 708.4, Procedural Requirements for Plans, submitted 08/15/80
- Rule 709, First Stage Episode Actions, submitted 08/15/80; 04/23/80; and 04/02/80
- Rule 710, Second Stage Episode Actions, submitted 08/15/80 and 04/23/80
- Rule 711, Third Stage Episode Actions, submitted 08/15/80 and 04/23/80
- Rule 713, Interdistrict Coordination, submitted 04/23/80
- Rule 714, Source Inspections, submitted 04/23/80
- Rule 715, Burning of Fossil Fuel on Episode Days, submitted 04/23/80

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

A revised version of rule 701 was adopted on September 8, 1995 and submitted to EPA on January 31, 1996.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Rule 701, Air Pollution Emergency Contingency Action, has been revised by consolidating the provisions of existing Rules 702 through 715 into amended Rule 701. These modifications are generaly administrative in nature, and in no case does this action represent a relaxation of an EPA approved requirement. Therefore, SCAQMD's Rule 701, Air Pollution Emergency Contingency Action, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be files. This action will be effective November 17, 1997 unless, by October 16, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 17, 1997.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604, Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than $50,000.00.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements. I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its action concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates Reform Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this actin will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this. EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Officeprior to publication of this action in today's **Federal Register**. This action is not a ''major action'' as defined by 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, published in Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 22, 1997.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(229)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(229) * * *

(i) * * *

(A) * * *

(*2*) Rule 701, adopted on September 9, 1995.

* * * * *

[FR Doc. 97–24415 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket Nos. 96–262, 94–1, 91–213, 96–263; FCC 97–158, FCC 97–159]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers

AGENCY: Federal Communications Commission.

ACTION: Notification of OMB approval and effective dates; correction.

SUMMARY: This document provides notification that OMB approved the information collections resulting from amendments and additions to Commission rules relating to access charge reform as set out in the Access Charge Reform First Report and Order. This document also corrects the summary of the Commission's Report and Order reforming access charges published in the Federal Register of June 11, 1997 (62 FR 31868) (Access Charge Reform Order), the summary of the Commission's Report and Order revising its price cap regulations for incumbent local exchange carriers published in the Federal Register of June 11, 1997 (62 FR 31939) (X-Factor Order), and the correction of the access charge reform summary published in the Federal Register of July 29, 1997 (62 FR 40460) (Access Charge Reform Correction).

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520, email: rlerner@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission sought OMB approval for certain information collections pursuant to rule amendments and additions in the Access Charge Reform Order. OMB approved the information collections on June 12, 1997. In the Access Charge Reform Order, the effective dates for several rule amendments and additions were contingent upon OMB approval. With OMB's approval, these contingent dates are no longer necessary. The X-Factor Order amended rules promulgated in the Access Charge Reform Order. One of these amendments concerned a rule that had an effective date contingent on OMB approval. In light of the OMB approval on June 12, 1997, we clarify the effective

dates of the rules and amendments in the Access Charge Reform Order and the X-Factor Order. We also correct the Access Charge Reform Order and the Access Charge Reform Correction to clarify the deletion and replacement of Subpart C.

These documents are corrected as follows:

Access Charge Reform First Report and Order

The publication on June 11, 1997 of the Access Charge Reform First and Order summary (62 FR 31868), which was the subject of FR Doc. 97–14628, is clarified as follows:

On June 12, 1997, OMB granted approval for the information collections resulting from several rule amendments and changes in the Access Charge Reform First Report and Order. On page 31868, in the first column, under DATES:, the following sections were to be effective upon approval of OMB, but no earlier than June 15, 1997: 47 CFR 61.45, 61.47, 69.104, 69.126, 69.151, 69.152, and 69.410. Because of the OMB approval granted on June 12, 1997, the following sections were therefore effective June 15, 1997: 47 CFR 61.45, 61.47, 69.104, 69.126, 69.151, 69.152, and 69.410. Similarly, the following sections were to be effective upon approval of OMB, but no earlier than January 1, 1998: 47 CFR 61.42, 61.48, 69.4, 69.106, 69.111, 69.153, and 69.156. Because of the OMB approval granted on June 12, 1997, the following sections are therefore effective January 1, 1998: 47 CFR 61.42, 61.48, 69.4, 69.106, 69.111, 69.153, and 69.156.

The publication on June 11, 1997 of the Access Charge Reform First and Order summary (62 FR 31868), which was the subject of FR Doc. 97–14628, is corrected as follows:

On page 31868, in the first column under DATES:, line 20, insert the following sentence after ''69.611.'':

''The removal of 47 CFR 69.201, 69.203, 69.204, 69.205 and 69.209 is effective January 1, 1998.''

On page 31935, in the third column, add amendment paragraph #22.a. that reads as follows:

''Sections 69.201, 69.203, 69.204, 69.205 and 69.209 are removed.''

On page 31935, in the third column, paragraph #23, line 1, insert

''by adding sections 69.151, 69.152, 69.153, 69.154, 69.155, 69.156 and 69.157''

after the phrase ''is revised''.

X-Factor Order

The publication on June 11, 1997 of the Price Cap Performance Review for Local Exchange Carriers Fourth Report and Order summary (62 FR 31939), which was the subject of FR Doc. 97–14746, is clarified as follows:

On June 12, 1997, OMB granted approval of information collections pursuant to rule amendments and additions in the Access Charge Reform First Report and Order, making those amendments to 47 CFR 61.45 effective June 15, 1997. Therefore, the subsequent amendments to 47 CFR 61.45 contained in the Price Cap Performance Review for Local Exchange Carriers Fourth Report and Order were effective June 16, 1997 as stated in the summary published at 62 FR 31939, because OMB approval was effective prior to June 15, 1997.

Access Charge Reform Correction

The publication on July 29, 1997 of the Access Charge Reform First and Order Correction (62 FR 40460), which was the subject of FR Doc. 97–19911, is corrected as follows:

On page 40460, second column, delete correction #2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24352 Filed 9–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–117; FCC 96–425]

Streamlining Rules and Regulations for Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The modifications to the Commission's rules and regulations on application and licensing requirements for satellite space and earth stations adopted in the *Part 25 Streamlining Order*, including the new FCC Form 312, became effective April 21, 1997. These modifications, which contained modified information collection requirements, were published in the **Federal Register** of February 10, 1997.

EFFECTIVE DATE: The modifications to 47 CFR part 25 published at 62 FR 5924 (February 10, 1997) and the new FCC Form 312 became effective April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell, International Bureau, (202) 418–0753.

SUPPLEMENTARY INFORMATION: On Febuary 10, 1997, the Commission published the **Federal Register** summary of the *Part 25 Streamlining Order* (FCC 96–425, 62 FR 5924 (February 10, 1997)). The *Part 25 Streamlining Order* streamlined the existing application and licensing procedures, reduced reporting requirements for a number of services, and consolidated various forms to make data collection more efficient. Specifically, the FCC (1) waived the construction permit requirement for satellite space stations; (2) extended the construction period for Very Small Aperture Terminals (''VSATs''); (3) eliminated the annual reporting requirement for VSATs; (4) increased the license term for temporary fixed earth stations operating in the C-band from one year to ten years; (5) reduced reporting requirements for earth and space stations; (6) reviewed and consolidated FCC Forms 430, 493, 704 and 702 into a new Form 312 with specific schedules; (7) expedited the processing of satellite inclined orbit authorizations; (8) streamlined the earth station modification process; (9) updated Part 25 rules in accordance with ITU Radio Regulations; and (10) eliminated burdensome space station application provisions.

Because these rule changes impose new or modified information collection requirements, they could not become effective until approved by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. In the February 10, 1997 **Federal Register** summary, we stated that the rules, regulations and the FCC Form 312 established in the *Part 25 Streamlining Order* would become effective upon approval by OMB, but no sooner than sixty days after publication in the **Federal Register**. OMB approved these rule changes on April 21, 1997.

The **Federal Register** Summary stated that ''[t]he Federal Communications Commission will publish a document at a later date announcing the effective date of these rules,'' *see* 62 FR 5924 (February 10, 1997). Therefore, the Commission announces that the rule changes adopted in the *Part 25 Streamlining Order* became effective on April 21, 1997.

List of Subjects in 47 CFR Part 25

Communciations common carriers, Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24213 Filed 9–15–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 95–176; FCC 97–279]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts rules implementing Section 713 of the Communications Act of 1934, as amended. Section 713, Video Programming Accessibility, was added to the Communications Act by section 305 of the Telecommunications Act of 1996 and directed the Commission to adopt rules by August 8, 1998, that generally require the closed captioning of video programming. The rules adopted by the Commission generally assign responsibility for compliance with the closed captioning requirements to the entity which delivers the programming to the consumer, establish separate transition schedules for programming first published or exhibited on or after the effective date of these rules and for programming first published or exhibited prior to the effective date of the rules, provide for a number of exemptions authorized by Congress and establish mechanisms for enforcement and compliance review. These rules are intended to increase the accessibility of video programming for persons with hearing disabilities.

EFFECTIVE DATE: These requirements and regulations become effective January 1, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via Internet at fain__t@al.eop.gov, and to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, John Adams or Alexis Johns, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172. For additional information concerning the information collections contained in this *Report and Order,* contact Judy Boley at (202) 418–0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No. 95–176, FCC 97–279, adopted August 7, 1997 and released August 22, 1997. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS'') at (202) 857–3800, 1919 M Street, NW, Suite 246, Washington, DC 20554. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

This rulemaking contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0761.

Title: Closed Captioning of Video Programming.

Type of Review: Revision to an existing collection.

Respondents: Individuals or households; business and other for-profit entities.

Number of Respondents: 100 petitions + 100 petition responses + 1,500 viewer complaints to program providers + 1,500 complaint responses from program providers + 500 instructions to refile complaints + 300 viewer complaints to the Commission + 300 complaint responses to the Commission = 4,300.

Estimated Time Per Response: .5–5 hours estimated for both the petition and complaint processes. Estimated annual burden to petitioners and respondents for petition processes: We estimate that program providers will annually initiate 100 petitions requesting exemption from the closed captioning requirements. We estimate that the average burden to complete all aspects of each petition process, including filing any possible reply comments and associated certifications, will be 5 hours. We estimate that 50% of petitions will be prepared using in-house assistance to draft petitions and that 50% of petitions will be prepared using outside legal assistance. Petitions prepared using outside legal assistance will undergo an average burden of 2 hours for each petition to coordinate information with outside legal assistance.

50 (50% of petitions prepared in-house assistance) x 5 hours = 250 hours.

50 (50% of petitions prepared using outside legal assistance) x 2 hours = 100 hours.

We estimate that there will be an average of one response to every petition filed. The average burden to complete all aspects of the response process, including making certification, is estimated to be 5 hours. We estimate that 50% of responses will be prepared using in-house assistance and that 50% of responses will be prepared using outside legal assistance.Commenters using outside legal assistance will undergo an average burden of 2 hours for each response to coordinate information with outside legal assistance.

50 (50% of responses prepared using in-house assistance) x 5 hours = 250 hours.

50 (50% of responses prepared using outside legal assistance) x 2 hours = 100 hours.

Estimated annual burden to viewers and program providers for the complaint process: We estimate there will be 1,500 annual complaints filed by viewers at the local level. The average burden for each complaint and response is estimated to be 1 hour per viewer and 1 hour per program provider. 1,500 viewer complaints x 1 hour and 1,500 program provider responses x 1 hour = 3,000 hours. In the case of an alleged violation by a television broadcast station or other program distributor for which the programming distributor is exempt from closed captioning responsibility pursuant to § 79.1(e)(9), the complaint shall be sent directly to the station or owner of the programming. A video programming distributor receiving a complaint regarding such programming must forward the complaint within seven days of receipt to the programmer or

send written instructions to the complainant on how to refile with the programmer. We estimate that one-third of complaints at the local level will have to be refiled in this manner, and that the average burden for programmers to either forward the complaint or send written instructions to the complainant on how to refile will have an average burden of 30 minutes (.5 hours) per complaint. 500 complaint x .5 hours = 250 hours.

We estimate that the majority of complaints will be resolved at the local level between the respective viewer and program provider. We estimate that approximately 300 (20% of 1,500) will go unresolved, resulting in complaints and responses being filed with the Commission. A copy of the complaint and any supporting documentation that is filed with the Commission must also be served on the video programming distributor. Responses to complaints filed with the Commission must also be served on the complainant. The average burden for all aspects of each complaint and response in this instance is estimated to be 2 hours per viewer and 4 hours per program provider. 300 viewer complaints x 2 hours and 30000 program provider responses x 4 hours = 1,800 hours.

Total Annual Burden to Respondents: 250 + 100 + 250 + 100 + 1,500 + 1,500 + 1,800 = 5,750 hours.

Total Annual Cost to Respondents: $42,100 estimated as follows: Program providers will use outside legal assistance paid at $150 per hour to complete approximately 50 petitions. 50 petitions x 5 hours per petition x $150 per hour = $37,500. Postage and stationery costs for petitions are estimated at an average of $5 per waiver. 100 petitions x $5 = $500. Viewers and program providers will undergo average postage and stationary costs for the complaint process estimated as follows: 1,500 viewer complaints filed with program providers x $1 = $1,500. 1,500 complaint responses x $1 = $1,500. 500 instructions to refile complaints x $1 = $500. 300 viewer complaints filed at the Commission x $1 per complaint = $300. 300 program provider responses x $1 = $300. Total annual cost to respondents: $37,500 + $500 + $1,500 + $1,500 + $500 + $300 + $600 = $42,100.

Needs and Uses: This Report and Order is adopted pursuant to section 713 of the Communications Act of 1934, as amended. The requirements set forth in section 713 are intended to ensure that video programming is accessible to individuals with hearing disabilities through closed captioning, regardless of the delivery mechanism used to reach consumers.

Synopsis of Report and Order

1. By the *Report and Order* (''R&O''), the Commission adopts rules to implement section 713 of the Communications Act, 47 U.S.C. 613, which generally requires video programming be closed captioned. In particular, this provision required the Commission to prescribe by August 8, 1997, rules and implementation schedules for the closed captioning of video programming and to establish appropriate exemptions. The rules we adopt are based on comments received in response to a *Notice of Proposed Rulemaking* in this proceeding summarized at 62 FR 4959 (February 3, 1997).

2. In the R&O, we address: (a) The responsibility for compliance with the rules we adopt; (b) obligations as to programming first published or exhibited on or after the effective date of our rules (''new programming'') and programming first published or exhibited prior to the effective date of our rules (''pre-rule programming''), including phase-in schedules; (c) the measurement of compliance with our rules; (d) exemptions authorized by Congress, including those based on the ''economically burdensome standard, existing contracts, and the undue burden standard; (e) standards for quality and accuracy of closed captioning; (f) mechanisms for enforcement and compliance review; and (g) other issues relating to the implementation of section 713 and matters for future review. The rules will become effective January 1, 1998.

3. Video programming distributors, defined as all entities that provide video programming directly to customers' homes, regardless of distribution technology used (e.g., broadcasters, cable operators, DBS operators) will, generally, be responsible for compliance with the new closed captioning requirements. Video programming distributors, however, will not be responsible for the captioning of programming that is not subject to their editorial control. The responsibility for compliance with respect to such programming will be placed on the providers and owners of such programming.

4. Section 713 requires the Commission to adopt rules to ensure that video programming first published or exhibited after the effective date of the rules be fully accessible through closed captioning. For this new programming that does not meet any of the criteria for exemption, we adopt an eight year transition period with benchmarks specified as a number of hours of required captioning at two year intervals. We will define full accessibility as the captioning of 95% of all new, nonexempt programming to provide for unforeseen difficulties that may arise. Compliance will be measured on a channel-by-channel basis for multichannel video programming distributors (''MVPDs'') and will be measured over each calendar quarter. During the transition period, each channel of programming will be required to meet the specified benchmark unless the amount of new, nonexempt programming offered on the channel is less than the benchmark. In such instances, at least 95% of the nonexempt, new programming will be required to be captioned. The first benchmark becomes effective during the first calendar quarter of 2000 and requires that 450 hours of programming be captioned during each quarter of 2000 and 2001. During each calendar quarter of 2002 and 2003, 900 hours of new, nonexempt programming must be captioned. The benchmark for each calendar quarter of 2004 and 2005 is 1350 hours of new, nonexempt programming.

5. Section 713 also requires the Commission to maximize the accessibility of video programming first published or exhibited prior to the effective date of the rules. For programming first published or exhibited before January 1, 1998, that does not meet any of our criteria for exemption, we will require that at least 75% of such programming be captioned after the end of a ten year transition period. We will not set specific benchmarks for pre-rule programming. We will, however, monitor distributors' efforts to increase the amount of captioning of pre-rule programming to ensure that channels are progressing toward the 75% requirement. After four years, we will reevaluate our decision not to establish specific benchmarks and consider whether the 75% threshold is appropriate to meet the goals of the statute.

6. We will also require video programming providers to continue to provide closed captioning at a level substantially the same as the average level of captioning that they provided during the first six months of 1997, even if the amount of captioned programming exceeds that required under the benchmarks. In addition, video programming distributors are required to pass through to consumers any programming they receive with closed captioning, when they do not edit the programming.

7. Section 713 permits the Commission to exempt by regulation

programs, classes of programs or services for which we determine a requirement to provide closed captioning will be economically burdensome. In creating these exemptions we intend to preserve the economic viability of certain classes of programming or certain entities associated with discreet classes of programming. We will, therefore, exempt non-English language programming and programming distributed between 2 a.m. and 6 a.m local time. We will also exempt primarily textual programming for which captioning would be largely redundant, including programming guide services or community bulletin boards, which provide the relevant information about program schedules or events in textual form. This exemption does not apply to programming, such as sports programming, home shopping or weather reports, where a significant amount of the relevant information is not readily available as text. Similarly, we will exempt programming which consists primarily of instrumental music such as a symphony or ballet. In such cases, where the majority of the program simply could not be captioned, we will also exempt any introductory discussion because the resources necessary to caption such minor portions of the program would outweigh any possible benefit. We will also exempt interstitial announcements, promotional programming and public service announcements that are ten minutes or less in duration. In this context, advertisements that are five minutes or less in duration are not considered programming and are not subject to our closed captioning rules. Similarly, we will exempt locally-produced and distributed non-news programming with limited repeat value such as local parades, local high school or nonprofessional sports or community theater productions. This exemption does not include programming readily captioned using ENR or programs with repeat value. We also adopt several exemptions designed to protect certain classes of video programming providers which might otherwise be harmed if subject to our rules. Thus programming produced for the instructional television fixed service (''ITFS'') will be exempt regardless of whether it is distributed by an ITFS licensee or other video programming distributor. We further exempt the programming on a new network for its first four years of operation. In addition, we will not require any video programming provider from the closed captioning requirements where the provider had annual gross revenues for an individual channel during the proceeding year of less than three million dollars. Finally, we will not require any video programming provider to spend more than 2% of its annual gross revenues for the proceeding year on the captioning of any channel of video programming.

8. Under section 713(d)(2), a video programming provider is exempt from captioning programming if such action would be inconsistent with a contract in effect on the date of enactment of the 1996 Act. Accordingly, we exempt programming subject to a contract in effect on February 8, 1998, for which compliance with our closed captioning requirements would constitute a breach of that contract.

9. Under section 713(d)(3), the Commission is required to consider petitions for exemption from the closed captioning rules if the requirements would impose an undue burden, which is defined as a significant burden or expense. A petition may be submitted by any party in the programming distribution chain, including video programming producers, syndicators and providers. Petitions must include information that demonstrates how our closed captioning requirements would result in an undue burden. Factors we will consider include: (a) The nature and cost of the closed captions for the programming; (b) the impact on the operation of the provider or program owner; (c) the financial resources of the provider or program owner; and (d) the type of operations of the provider or program owner. Petitioners may also submit any other information they deem appropriate for our evaluation of their circumstances. Depending on the individual circumstance, we may grant partial exemptions and may consider proposals that programming be made more accessible through alternative means (e.g., additional text or graphics).

10. The rules require video programming providers to deliver intact the closed captioning they receive as part of the programming they distribute to viewers, if the programming is not edited. They also must maintain their equipment to ensure the technical quality of the closed captioning they transmit. We will not, however, adopt standards for the non-technical aspects of closed captioning. We will monitor the captions that result from the implementation of our rules and may revisit this issue at a later date. We will not restrict the use of captioning methodology generally and will permit the use of electronic news room (''ENR'') capability to create captions from teleprompter scripts.

11. We will enforce our rules through a complaint process modeled after existing complaint procedures. Complaints alleging violation of our closed captioning rules must first be directed in writing to the video programming distributor responsible for delivery of the programming directly to the customer's home. Complaints must be filed no later than the end of the calendar quarter following the calendar quarter in which the alleged violation occurred. The video programming distributor must respond to the complaint no later than 45 days after the end of the calendar quarter in which the violation is alleged to have occurred or 45 days after receipt of the written complaint, whichever is later. If a video programming distributor fails to respond to a complaint or a dispute remains following this initial procedure, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. The video programming distributor will have 15 days to respond to any complaint filed with the Commission. We will not adopt any specific recordkeeping requirements. In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the rules. We also will permit video programming distributors to rely on certifications from program suppliers to demonstrate compliance.

12. In addition, in the R&O, we indicated that there are several issues related to the implementation of closed captioning requirements that need to be studied further or reevaluated during our transition period. We intend to study further technological changes that may affect closed captioning in a subsequent proceeding, including issues relating to digital television and other technologies that may change the way captions are created and delivered. We also are concerned about providing viewers with hearing disabilities with accurate information regarding fast breaking news of great importance such as severe weather conditions, earthquakes and disruptions of the transportation system. As we did not receive sufficient information on this issue in this proceeding, we will initiate a proceeding to determine whether additional rules are needed in this area. Moreover, we will reexamine a number of our decisions during the transition period, including the captioning requirements for pre-rule programming, the appropriateness of certain

exemptions, the use of ENR and the decision not to adopt standards relating to non-technical quality.

Regulatory Flexibility Act Certification

13. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice of Proposed Rulemaking in this proceeding. We sought written public comment on the expected impact of the proposed policies and rules on small entities in the *NPRM,* including comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

14. *Need for Action and Objectives of the Rule:* The 1996 Act added a new Section 713 to the Communications Act of 1934 that *inter alia* requires the Commission to develop rules to increase the availability of video programming with closed captioning. We are promulgating these rules in order to implement this provision of section 713. The statutory objective of the closed captioning provisions is to promote the increased accessibility of video programming for persons with hearing disabilities.

15. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA:* The Small Cable Business Association (''SCBA'') filed the only comment specifically responsive to the IRFA. Several other commenters addressed the IRFA in their general comments. Other parties, while not specifically commenting on the IRFA, discuss the potential effect of the proposed rules on small entities.

16. SCBA concurs with our estimates regarding the number of small cable operators that may be affected by our closed captioning requirements. SCBA offers several specific suggestions to minimize the effects of the closed captioning requirements on small cable operators. These proposals include: (a) Allocating the burden of compliance to programming producers and owners; (b) a class exemption for small cable operators serving 1,000 or fewer subscribers; (c) streamlined compliance and complaint rules for small cable systems serving 15,000 or fewer subscribers including; (d) streamlined waiver procedures to permit qualifying small systems to access a simplified, low-cost waiver process; (e) a class exemption for PEG programming; (f) a class exemption for local origination programming.

17. Cassidy asserts that our conclusions are overly inclusive and, if all small providers were exempted, Congress' intent to increase the availability of closed captioned programming would be circumvented. Commenters representing smaller captioning agencies suggest ways to minimize the effect of the new regulations on small captioners. Specifically, Para Technologies proposes that we adopt a phase-in schedule requiring video program providers to increase closed captioned programming 4% every three months over the eight year transition period. According to Para Technologies, this plan would increase competition in the captioning industry, leading to lower rates and more widely available captioned programming. MCS suggests that we should require that video producers and program providers use small captioning companies for a minimum of 25% of their real time captioning requirements.

18. Kaleidoscope indicates that its proposal to define economic burden as a situation where the cost of captioning would exceed 10% of the relative program budget should minimize the burden on small entities. Kaleidoscope asserts that this is an objective test that would exempt small entities from closed captioning requirements that they may find economically burdensome.

19. The Association of America's Public Television Stations (''APTS'') asserts that the closed captioning requirements would be especially onerous to its smaller members. APTS suggests that a $3 million benchmark is generally accepted among noncommercial stations as indicative of a small station and urges us to adopt an economic burden exemption for local programming produced by such stations.

20. Instructional Television Fixed Services (''ITFS'') licensees argue that their programming should not be subject to the closed captioning requirements as they represent a formidable economic burden. Several commenters argue that they are already obligated to ensure that their services are accessible under both the ADA and the Rehabilitation Act of 1973. These commenters propose excluding ITFS providers from the definition of ''video programming provider'' and exempting ITFS programming carried on wireless cable systems from any closed captioning requirements.

21. Several low power television station (''LPTV'') operators assert that as small businesses, LPTV operators warrant an exemption based on the economic burden that closed captioning requirements would pose. The Community Broadcasters Association (''CBA'') suggests that specific classes of programming carried by some LPTV stations should be exempt in order to relieve these providers of an economic burden.

22. Access centers and organizations providing governmental programming assert that their operations qualify as small entities. These commenters assert that, in many cases, the financial requirements for closed captioning would exceed or substantially consume their entire annual budgets. Several of these commenters state that mandatory captioning requirements could effectively eliminate public, educational and governmental (''PEG'') programming. Accordingly, these commenters seek an exemption based on the economic burden posed by closed captioning requirements unless an alternative funding mechanism becomes available. The Greater Metro Telecommunications Consortium (''GMTC'') suggests that PEG programmers should be allowed to weigh the costs and the benefits of providing captioning and consider alternatives. Several commenters representing multichannel video programming distribution systems (''MVPDs'') join the access centers in arguing that PEG channels should be exempt. These commenters concur that PEG channels generally operate on very limited budgets which preclude captioning.

23. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

24. *Small MVPDs:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (SIC 4841). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (''DBS''), multichannel multipoint distribution systems (''MMDS''), satellite master antenna systems (''SMATV'') and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television

services and 1,423 had less than $11 million in revenue as of 1992. We address below each service individually to provide a more precise estimate of small entities.

25. *Cable Systems:* We have developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under our rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting.

26. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2). We have determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

27. *MMDS:* We refined the definition of ''small entity'' for the auction of MMDS spectrum as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA. 47 CFR 21.961(b)(1).

28. We completed the MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We conclude that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the auction rules.

29. *ITFS:* There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition.

30. *DBS:* Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. We do not collect annual revenue data for DBS and, therefore, are unable to ascertain the number of small DBS licensees that could be affected by these rules. Estimates of 1996 revenues for various DBS operators are significantly greater than $11,000,000 and range from a low of $31,132,000 for Alphastar to a high of $1,100,000,000 for Primestar. Accordingly, we now conclude that no DBS operator qualifies as a small entity.

31. *Home Satellite Dish (''HSD''):* The market for HSD service is difficult to quantify. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator (''MSO''). Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

32. *Open Video System (''OVS''):* We have certified nine OVS operators. Of these nine, only two are providing service. They are Bell Atlantic serving its Dover, New Jersey system and Metropolitan Fiber Systems operating OVS systems in Boston and New York. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. *SMATVs:* Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we conclude that a substantial number of SMATV operators qualify as small entities.

34. *Local Multipoint Distribution System (''LMDS''):* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined in paragraph 24 *supra.* A small radiotelephone entity is one with 1500 employees or less. 13 CFR 121.1201. However, for the

purposes of this R&O on closed captioning, we include only an estimate of LMDS video service providers.

35. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *Third NPRM,* CC Docket No. 92–297, 58 FR 6400 (January 28, 1993), we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

36. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We also conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

37. *Small Broadcast Stations:* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201.

38. *Estimates Based on Census and BIA Data:* According to the Bureau of the Census, in 1992, 1155 out of 1478 operating television stations reported revenues of less than $10 million for 1992. This represents 78% of all television stations, including noncommercial stations. The Bureau of the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of $10.5 million in annual receipts. Census data also indicate that 81% of operating firms (that owned at least one television station) had revenues of less than $10 million.

We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1141 full power commercial television stations. It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database. The BIA data indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of $10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of $10.5 million or less, representing approximately 68% of the 1141 full power commercial television stations listed in the BIA data base.

40. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than $10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, then small entities would constitute 72% of the total number of owners.

41. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our rules will apply to as many as 1150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as 771 commercial television stations (about 68% of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

42. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922. 13 CFR 121.201. The 1992 Bureau of the Census data indicate the following: (1) There were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.

43. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this R&O.

44. *Description of Reporting, Recordkeeping and Other Compliance Requirements:* We do not prescribe any reporting requirements. While several parties encouraged adoption of such requirements, we believe that our enforcement process alleviates the need for reporting. Thus, we are not imposing recordkeeping requirements for video programming distributors. Rather, we allow them to exercise their own discretion and only require that they retain records sufficient to demonstrate compliance with our rules (§ 79.1(g)(6)). In order to further relieve small video programming distributors of any unnecessary recordkeeping burden, we permit video programming distributors to rely on certifications from the programming suppliers to demonstrate compliance with our closed captioning rules (§ 79.1(g)(6)).

45. *Steps Taken to Minimize Significant Economic Impact On Small*

Entities and Significant Alternatives Considered: In formulating our closed captioning rules, we have taken steps to minimize the effect on small entities while making video programming more accessible to persons with hearing disabilities. These efforts are consistent with the Congressional goal of increasing the availability of closed captioned programming while preserving the diversity of available programming.

46. Generally, we do not specifically exempt any class of video programming distributor because we have determined that all video programming distributors are technically capable of delivering captioning. We do, however, recognize that ITFS licensees serve a particular, well defined niche as distributors of specialized programming directed at specified sites and not generally intended for residential use. We also recognize that the general public benefits from the redistribution of this programming by MMDS operators. We therefore determine that ITFS operators warrant a blanket exemption. Accordingly, we exempt programming originated by ITFS licensees, regardless of the facility used to distribute this programming (§ 79.1(d)(7)).

47. We also recognize the significance of locally produced and distributed non-news programming of primarily local interest and limited repeat value. Much of this programming is produced on a low budget as a public service and our closed captioning requirements might impose a significant economic burden that could result in such programming not being televised. We therefore create a limited exemption for such programming (§ 79.1(d)(8)).

48. We recognize that many new video programming services will often qualify as small entities. We also recognize the need to allow new and innovative services designed to serve emerging or niche markets greater flexibility than more established services serving well defined markets. Accordingly, our rules provide an exemption to relieve new services from our captioning requirements for their first four years of operation (§ 79.1(d)(9)).

49. We do not require any video programming provider to spend more than 2% of its annual gross revenues received from a channel on closed captioning (§ 79.1(d)(11)). This will require video programming providers to devote a reasonable portion of their revenue stream to closed captioning. This mechanism will help to avoid an ''all or nothing'' approach thus ensuring that accessibility to captioned programming is increased without creating an economic burden on video programming providers.

50. Furthermore, we exempt from our closed captioning requirements any video programming provider with less than $3 million in annual gross revenues except that it will be required to pass through any captioning it may receive (§ 79.1(d)(12)). This provision is intended to address the problems of small video programming providers that are not in a position to devote significant resources towards captioning and who would, even if they expended 2% of their revenues on captioning, provide only a minimal amount of captioned programming. This will relieve the smallest of entities of any burdensome obligation to provide captioning without significantly reducing the availability of captioning.

51. In order to further minimize the impact of any unanticipated burdens that may be created by our closed captioning requirements, we adopt a petition process that permits us to consider requests for individual exemptions from these rules based on the statutory undue burden standard (§ 79.1(f)). This mechanism will allow us to address the impact of these rules on individual entities and modify the rules to accommodate individual circumstances. We have specifically designed these procedures to ameliorate the impact of the closed captioning rules in a manner consistent with the objective of increasing the availability of captioned programming.

Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to authority found in sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the Commission's rules *are hereby amended* by adding a new part 79 as set forth below. The amendments set forth below shall become effective January 1, 1998.

53. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 79

Cable television, Closed captioning, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Title 47 of the Code of Federal Regulations is amended by adding a new Part 79 consisting of § 79.1 to read as follows:

PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

Sec.

Authority: 47 U.S.C. 613.

§ 79.1 Closed captioning of video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use. Video programming includes advertisements of more than five minutes in duration but does not include advertisements of five minutes' duration or less.

(2) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. An entity contracting for program distribution over a video programming distributor that is itself exempt from captioning that programming pursuant to paragraph (e)(9) of this section shall itself be treated as a video programming distributor for purposes of this section To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

(3) *Video programming provider.* Any video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.

(4) *Closed captioning.* The visual display of the audio portion of video programming contained in line 21 of the vertical blanking interval (VBI) pursuant to the technical specifications set forth in § 15.119 of this chapter or the equivalent thereof.

(5) *New programming.* Video programming that is first published or exhibited on or after January 1, 1998.

(6) *Pre-rule programming.* (i) Video programming that was first published or exhibited before January 1, 1998. (ii) Video programming first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission and exhibition prior to the date on which such television receivers must, by Commission rule, be equipped with built-in decoder circuitry designed to display closed-captioned digital television transmissions.

(7) *Nonexempt programming.* Video programming that is not exempt under paragraph (d) of this section and, accordingly, is subject to closed captioning requirements set forth in this section.

(b) *Requirements for closed captioning of video programming*—(1) *Requirements for new programming.* Video programming distributors must provide closed captioning for nonexempt video programming that is being distributed and exhibited on each channel during each calendar quarter in accordance with the following requirements:

(i) Between January 1, 2000, and December 31, 2001, video programming distributors shall provide at least 450 hours of captioned video programming, or if the video programming distributor provides less than 450 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions;

(ii) Between January 1, 2002, and December 31, 2003, video programming distributors shall provide at least 900 hours of captioned video programming, or if the video programming distributor provides less than 900 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions;

(iii) Between January 1, 2004, and December 31, 2005, video programming distributors shall provide at least an average of 1350 hours of captioned video programming, or if the video programming distributor provides less than 1350 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions; and

(iv) As of January 1, 2006, and thereafter, 95% of the programming distributor's new nonexempt video programming must be provided with captions.

(2) *Requirements for pre-rule programming.* As of January 1, 2008, and thereafter, 75% of the programming distributor's pre-rule nonexempt video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(3) Video programming distributors shall continue to provide captioned video programming at substantially the same level as the average level of captioning that they provided during the first 6 months of 1997 even if that amount of captioning exceeds the requirements otherwise set forth in this section.

(c) *Obligation to pass through captions of already captioned programs.*—All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of § 15.119 of this chapter unless such programming is recaptioned or the captions are reformatted by the programming distributor.

(d) *Exempt programs and providers.*—For purposes of determining compliance with this section, any video programming or video programming provider that meets one or more of the following criteria shall be exempt to the extent specified in this paragraph.

(1) *Programming subject to contractual captioning restrictions.* Video programming that is subject to a contract in effect on or before February 8, 1996, but not any extension or renewal of such contract, for which an obligation to provide closed captioning would constitute a breach of contract.

(2) *Video programming or video programming provider for which the captioning requirement has been waived.* Any video programming or video programming provider for which the Commission has determined that a requirement for closed captioning imposes an undue burden on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

(3) *Non-english language programming.* All programming for which the audio is in a language other than English, except that scripted programming that can be captioned using the ''electronic news room'' technique is not exempt.

(4) *Primarily textual programming.* Video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics (e.g., program schedule channels or community bulletin boards).

(5) *Programming distributed in the late night hours.* Programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Video programming distributors providing a channel that consists of a service that is distributed and exhibited for viewing in more than a single time zone shall be exempt from closed captioning that service for any continuous 4 hour time period they may select, commencing not earlier than 12 a.m. local time and ending not later than 7 a.m. local time in any location where that service is intended for viewing. This exemption is to be determined based on the primary reception locations and remains applicable even if the transmission is accessible and distributed or exhibited in other time zones on a secondary basis. Video programming distributors providing service outside of the 48 contiguous states may treat as exempt programming that is exempt under this paragraph when distributed in the contiguous states.

(6) *Interstitials, promotional announcements and public service announcements.* Interstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.

(7) *ITFS programming.* Video programming produced for the instructional television fixed service (ITFS).

(8) *Locally produced and distributed non-news programming with limited repeat value.* Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the ''electronic news room'' technique of captioning is unavailable.

(9) *Programming on new networks.* Programming on a video programming network for the first four years after it begins operation.

(10) *Primarily non-vocal musical programming.* Programming that consists primarily of non-vocal music.

(11) *Captioning expense in excess of 2% of gross revenues.* No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.

(12) *Channels producing revenues of under $3,000,000.* No video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less

than $3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received pursuant to paragraph (c) of this section.

(e) *Responsibility for and determination of compliance.*—(1) Compliance shall be calculated on a per channel, calendar quarter basis;

(2) Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning;

(3) Live programming or repeats of programming originally transmitted live that are captioned using the so-called ''electronic news room'' technique will be considered captioned. The live portions of noncommercial broadcasters' fundraising activities that use automated software to create a continuous captioned message will be considered captioned;

(4) Compliance will be required with respect to the type of video programming generally distributed to residential households. Programming produced solely for closed circuit or private distribution is not covered by these rules;

(5) Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards the compliance with the requirements for new programming prior to January 1, 2006. Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except that video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards compliance with the requirements for pre-rule programming.

(6) For purposes of paragraph (d)(11) of this section, captioning expenses include direct expenditures for captioning as well as allowable costs specifically allocated by a programming supplier through the price of the video programming to that video programming provider. To be an allowable allocated cost, a programming supplier may not allocate more than 100% of the costs of captioning to individual video programming providers. A programming supplier may allocate the captioning costs only once and may use any commercially reasonable allocation method;

(7) For purposes of paragraphs (d)(11) and (d)(12) of this section, annual gross revenues shall be calculated for each channel individually based on revenues received in the preceding calendar year from all sources related to the programming on that channel. Revenue for channels shared between network and local programming shall be separately calculated for network and for non-network programming, with neither the network nor the local video programming provider being required to spend more than 2% of its revenues for captioning. Thus, for example, compliance with respect to a network service distributed by a multichannel video service distributor, such as a cable operator, would be calculated based on the revenues received by the network itself (as would the related captioning expenditure). For local service providers such as broadcasters, advertising revenues from station-controlled inventory would be included. For cable operators providing local origination programming, the annual gross revenues received for each channel will be used to determine compliance. Evidence of compliance could include certification from the network supplier that the requirements of the test had been met. Multichannel video programming distributors, in calculating non-network revenues for a channel offered to subscribers as part of a multichannel package or tier, will not include a pro rata share of subscriber revenues, but will include all other revenues from the channel, including advertising and ancillary revenues. Revenues for channels supported by direct sales of products will include only the revenues from the product sales activity (*e.g.*, sales commissions) and not the revenues from the actual products offered to subscribers. Evidence of compliance could include certification from the network supplier that the requirements of this test have been met.

(8) If two or more networks (or sources of programming) share a single channel, that channel shall be considered to be in compliance if each of the sources of video programming are in compliance where they are carried on a full time basis;

(9) Video programming distributors shall not be required to provide closed captioning for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed pursuant to sections 614 and 615 of the Communications Act or pursuant to the compulsory copyright licensing provisions of sections 111 and 119 of the Copyright Act (Title 17 U.S.C. 111 and 119); programming involving candidates for public office covered by sections 315 and 312 of the Communications Act and associated policies; commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the Communications Act; video programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement pursuant to section 335(b)(3) of the Communications Act to the extent such video programming is exempt from the editorial control of the video programming provider; and video programming distributed by a common carrier or that is distributed on an open video system pursuant to section 653 of the Communications Act by an entity other than the open video system operator. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

(f) *Procedures for exemptions based on undue burden.*—(1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will result in an undue burden.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would cause an undue burden. The term ''undue burden'' means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning impose an undue burden include:

(i) The nature and cost of the closed captions for the programming;

(ii) The impact on the operation of the provider or program owner;

(iii) The financial resources of the provider or program owner; and

(iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming. Undue burden shall be evaluated with regard to the individual outlet.

(4) An original and two (2) copies of a petition requesting an exemption based on the undue burden standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Comments or oppositions to the petition shall be served on the petitioner and shall include a certification that the petitioner was served with a copy. Replies to comments or oppositions shall be served on the commenting or opposing party and shall include a certification that the commenter was served with a copy.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) All petitions and responsive pleadings shall contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an undue burden exemption from the closed captioning requirements.

(11) During the pendency of an undue burden determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

(g) *Complaint procedures.*—(1) No complaint concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission unless such complaint is first sent to the video programming distributor responsible for delivery and exhibition of the video programming. A complaint must be in writing, must state with specificity the alleged Commission rule violated and must include some evidence of the alleged rule violation. In the case of an alleged violation by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, the complaint shall be sent directly to the station or owner of the programming. A video programming distributor receiving a complaint regarding such programming must forward the complaint within seven days of receipt to the programmer or send written instructions to the complainant on how to refile with the programmer.

(2) A complaint will not be considered if it is filed with the video programming distributor later than the end of the calendar quarter following the calendar quarter in which the alleged violation has occurred.

(3) The video programming distributor must respond in writing to a complaint no later than 45 days after the end of the calendar quarter in which the violation is alleged to have occurred or 45 days after receipt of a written complaint, whichever is later.

(4) If a video programming distributor fails to respond to a complaint or a dispute remains following the initial complaint resolution procedures, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. An original and two (2) copies of the complaint, and all subsequent pleadings shall be filed in accordance with § 0.401(a) of this chapter. The complaint shall include evidence that demonstrates the alleged violation of the closed captioning requirements of this section and shall certify that a copy of the complaint and the supporting evidence was first directed to the video programming distributor. A copy of the complaint and any supporting documentation must be served on the video programming distributor.

(5) The video programming distributor shall have 15 days to respond to the complaint. In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules. The response to the complaint shall be served on the complainant.

(6) Certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, may be relied on to demonstrate compliance. Distributors will not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets our captioning requirements if the distributor is unaware that the certification is false. Video programming providers may rely on the accuracy of certifications. Appropriate action may be taken with respect to deliberate falsifications.

(7) The Commission will review the complaint, including all supporting evidence, and determine whether a violation has occurred. The Commission shall, as needed, request additional information from the video programming provider.

(8) If the Commission finds that a violation has occurred, penalties may be imposed, including a requirement that the video programming distributor deliver video programming containing closed captioning in an amount exceeding that specified in paragraph (b) of this section in a future time period.

(h) *Private rights of action prohibited.*—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[FR Doc. 97–24504 Filed 9–15–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. PS–151; Amdt. 193–13]

RIN 2137–AC 88

Liquefied Natural Gas Regulations—Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correcting RIN numbers.

SUMMARY: This document corrects the RIN number of direct final rule [Docket No. PS–151; Amdt. 193–13], published in the **Federal Register** on February 25, 1997 (62 FR 8402). In the document heading on page 8402, the RIN number ''RIN 2137–AC91'' is changed to read ''RIN 2137–AC88.'' The direct final rule updates Liquefied Natural Gas (LNG) regulations by replacing older models for calculating distances for gas dispersion and thermal radiations with the current models. This document also corrects the RIN number of the Notice [Docket No. PS–151; Notice 1], published in the **Federal Register** on July 8, 1997 (62 FR 36465). In the document heading on page 36465, the RIN number ''RIN 2137–AC91'' is changed to read ''RIN 2137–AC88.'' The notice confirmed the effective date of the direct final rule above.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571.

Issued in Washington, DC, on September 11, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–24569 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002 and 1108

[STB Ex Parte No. 560]

Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule published in the **Federal Register** on September 2, 1997, 62 FR 46217, allowing arbitration of certain disputes subject to the jurisdiction of the Surface Transportation Board, to include the necessary small business impact certification.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 565–1558. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) has adopted rules providing a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the Board. By oversight, the Board's certification that these rules will not have a significant economic effect on a substantial number of small entities (set forth on page 12 of the Board's decision) was not included in the **Federal Register** notice. Accordingly, in the final rule published on September 2, 1997 (62 FR 46217), make the following correction:

On page 46217, in the first column, at the end of the last complete paragraph add the following sentence: ''The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities.''

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24409 Filed 9–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 090897C]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

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

ACTION: Closure.

SUMMARY: NMFS has determined that the 1997 Atlantic bluefin tuna (ABT) September period General category subquota will be attained by September 13, 1997. Therefore, the General category fishery for September will be closed effective at 11:30 p.m. on September 13, 1997. This action is being taken to prevent overharvest of the adjusted 195 metric tons (mt) subquota for the September period.

DATES: Effective 11:30 p.m. local time on September 13, 1997, through September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 187 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning September 1 and ending September 30. Due to an underharvest of 8 mt in the June-August period subquota, the September period subquota was adjusted to 195 mt. Based on reported catch and effort, NMFS projects that this revised subquota will be reached by September 13, 1997. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the General category must cease at 11:30 p.m. local time September 13, 1997. For the remainder of September, previously designated restricted-fishing days are waived, and anglers aboard General category vessels may fish under rules applicable for the Angling category. The General category will reopen October 1, 1997 with a quota of 72 mt for the October-December period. Note that this October-December period subquota includes a 10–mt set aside for the New York Bight fishery. If necessary, the October-December period subquota will be adjusted based on actual landings from the current period.

The intent of this closure is to prevent overharvest of the September period subquota established for the General category.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 10, 1997.

Gary C. Matlock,

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

[FR Doc. 97–24578 Filed 9–11–97; 2:56 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 091097D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1997 total allowable catch (TAC) for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 12, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 TAC for pollock in Statistical Area 630 of the GOA was established as 24,550 metric tons (mt) by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997), determined in accordance with § 679.20(a)(5)(ii)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 TAC for pollock in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,050 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for pollock in Statistical Area 630 of the GOA.

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

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for pollock in Statistical Area 630 of the GOA. Providing prior notice and an opportunity for public comment is impracticable and contrary to public interest. The fleet will soon take the directed fishing allowance for pollock in Statistical Area 630 of the GOA. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 10, 1997.

Gary C. Matlock,

Director Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24519 Filed 9–11–97; 2:54 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 091097C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Trawl Vessels Using Nonpelagic Trawl Gear in Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock by trawl vessels using nonpelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 Pacific halibut bycatch allowance specified for the trawl pollock/Atka mackerel/''other species'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 11, 1997, A.l.t., December 31, 1997.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 Pacific halibut bycatch allowance specified for the BSAI pollock/Atka mackerel/''other species'' fishery category, which is defined at § 679.21(e)(3)(iv)(F), was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 350 metric tons.

In accordance with § 679.21(e)(7)(iv), the Administrator, Alaska Region, NMFS, has determined that the 1997 Pacific halibut bycatch allowance specified for the trawl pollock/Atka mackerel/''other species'' fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for pollock by trawl vessels using nonpelagic trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 Pacific halibut bycatch allowance specified for the trawl pollock/Atka mackerel/''other species'' fishery category in the BSAI. Providing prior notice and an opportunity for public comment for this action is impracticable and contrary to public interest. The fleet has taken the Pacific halibut bycatch allowance specified for the trawl pollock/Atka mackerel/''other species'' fishery category in the BSAI. Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: September 10, 1997.

Gary C. Matlock,

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

[FR Doc. 97–24518 Filed 9–11–97; 2:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 179
Tuesday, September 16, 1997

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. 97–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri s64106, telephone (816) 425–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–53–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated

for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche, Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, and –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI—Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.

Airplane models	Docket No.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Pilatus Models PC–12 and PC–12/45 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Switzerland and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. 97–CE–53–AD.

Applicability: Models PC–12 and PC–12/45 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24481 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives: Industrie Aeronautiche e Meccaniche Rinaldo Piaggio, S.p.A., Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche Rinaldo Piaggio, S.p.A. (Piaggio) Model P–180 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the rules docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–52–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.

Docket No.	Manufacturer airplane model	Federal Register citation
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
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Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI-Marchetti S.r.I. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 550, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Piaggio Model P–180 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Italy and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. (Piaggio): Docket No. 97–CE–52–AD.

Applicability: Model P–180 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing, aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

- Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or

autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known and forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

• (2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as—18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

NOTE 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24480 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 425–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–55–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.

Airplane models	Docket No.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560-A, –560–E, –560–F, –680, –680-E, –680FL(P) –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI-Marchetti S.r.I. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All SOCATA Model TBM 700 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in France and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 47 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Socata—Groupe Aerospatiale.: Docket No. 97–CE–55–AD.

Applicability: Model TBM 700 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in

accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24479 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; SIAI Marchetti, S.r.1 Models SF600 and SF600A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SIAI Marchetti, S.r.1 (Marchetti) Models SF600 and SF600A airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932; facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–64–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation

of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	FEDERAL REGISTER citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
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96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
Raytheon Aircraft Company (fomerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD

Airplane models	Docket No.
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Marchetti Models SF600 and SF600A airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Italy and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA has determined that there are no Marchetti Models SF600 and SF600A airplanes currently in the U.S. registry would be affected by the proposed AD. If any of these airplanes were registered in the U.S., it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Siai Marchetti, S.r.1: Docket No. 97–CE–64–AD.

Applicability: Models SF600 and SF600A airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24478 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Harbin Aircraft Manufacturing Corporation Model Y12 IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Harbin Aircraft Manufacturing Corporation (HMAC) Model Y12 IV airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–50–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City,Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–NM–14–AD	Jetstream 4101	61 FR 2142
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96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160

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Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

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Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
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Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
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The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Harbin Model Y12 IV airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in China and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA has determined that there are no Harbin Model Y12 IV airplanes currently in the U.S. registry would be

affected by the proposed AD. If any of these airplanes were registered in the U.S., it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Harbin Aircraft Manufacturing Corporation (HMAC): Docket No. 97–CE–50–AD.

Applicability: Model Y12 IV Airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24484 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA Airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 Series Airplanes (Formerly Known as Beech Aircraft Corporation Model and Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company Models (Raytheon) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes (formerly known as Beech Aircraft Corporation Model and series airplanes). This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–58–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, Central Region, Office of the Assistant Chief Counsel, Attention: rules docket No. 97–CE–58–-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the

wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	FEDERAL REGISTER citation
96-CE–01-AD	de Havilland DHC–6 Series	61 FR 2175.
96-CE–02-AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96-CE–03-AD	Beech 99/200/1900 Series	61 FR 2180.
96-CE–04-AD	Dornier 228 Series	61 FR 2172.
96-CE–05-AD	Cessna 208/208B	61 FR 2178.
96-CE–06-AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96-CE–07-AD	Jetstream 3101/3201	61 FR 2186.
96-NM–13-AD	Jetstream BAe ATP	61 FR 2144.
96-NM–14-AD	Jetstream 4101	61 FR 2142.
96-NM–15-AD	British Aerospace HS 748 Series	61 FR 2139.
96-NM–16-AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96-NM–17-AD	CASA C–212/CN–235 Series	61 FR 2166.
96-NM–18-AD	Dornier 328–100 Series	61 FR 2157.
96-NM–19-AD	EMBRAER EMB–120 Series	61 FR 2163.
96-NM–20-AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96-NM–21-AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96-NM–22-AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151.
95-NM–146-AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD

Airplane models	Docket No.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models,	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

• All Raytheon Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60 , 65-B80, 65-B90, 90, F90, 100, 300, and B300 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and

• Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 2,140 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. 97-CE–58-AD.

Applicability: Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes (formerly known as Beech Aircraft Corporation Model and series airplanes), (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24483 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–49–AD]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive

(AD) that is applicable to certain AeroSpace Technologies of Australia (ASTA) Models N22B and N24A airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932; facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–49–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175

Docket No.	Manufacturer/airplane model	Federal Register citation
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96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
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96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- ASTA Models N22B and N24A airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

These airplane models are manufactured in Australia and are type certificated for operations in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14

CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Aerospace Technologies of Australia PTY. Ltd. (ASTA): Docket No. 97–CE–49–AD.

Applicability: Model N22B and N24A Airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24488 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Partenavia Costruzioni Aeronauticas, S.p.A. Model P68, AP68TP 300, AP68TP 600 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Partenavia Costruzioni Aeronauticas, S.p.A. (Partenavia) Model P68, AP68TP 300, AP68TP 600 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–51–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
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Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche.	
Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Partenavia Models P68, AP68TP 300, and AP68TP 600 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Italy and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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

The cost impact 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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified

conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Partenavia Costruzioni Aeronauticas, S.p.A.: Docket No. 97–CE–51–AD.

Applicability: Models P68, AP68TP 300, AP68TP 600 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24487 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–63–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–63–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same

type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA-Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.

Airplane models	Docket No.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Cessna Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 4,344 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Cessna Aircraft Company (Cessna): Docket No. 97–CE–63–AD.

Applicability: Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in severe icing conditions.

• All wing icing inspection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to ''Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24492 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–59–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 2000 Airplanes Formerly Known as Beech Aircraft Corporation Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) Models 2000 airplanes (formerly known as Beech Aircraft Corporation Model 2000 airplanes). This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE–59-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite

900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97-CE–59-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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE–59-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	FEDERAL REGISTER citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151.

Docket No.	Manufacturer/airplane model	FEDERAL REGISTER citation
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Raytheon Model 2000 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues)
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 51 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is

approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Raytheon Aircraft Company (Raytheon): Docket No. 97–CE–59–AD.

Applicability: Model 2000 airplanes (all serial numbers), (formerly known as Beech Aircraft Corporation Model 2000 airplanes), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane. During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-

of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24491 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–62–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 210N, P210N, P210R, and 337 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply Cessna Aircraft Company (Cessna) Models 210N, P210N, P210R, and 337 series airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–63–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that

flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
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96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
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96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
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Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio, S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD

Airplane models	Docket No.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Cessna Models T210N, P210N, P210R, and 337 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Australia and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 1,208 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 97–CE–62–AD.

Applicability: Models T210N (Serial Number (S/N) 21063641 through 21064897), P210N (S/N P21000386 through P21000834), P210R (all serial numbers), and the 337 Series Airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in severe icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24490 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–54–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Britten-Norman Limited BN–2A, BN–2B, and BN–2T series airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly

defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–54–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicated the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139

Docket No.	Manufacturer/airplane model	Federal Register citation
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96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
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Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

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Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720..	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
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Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Pilatus Britten-Norman Models BN–2A, BN–2B, and BN–2T airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in England and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 12 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Pilatus Britten-Norman Limited: Docket No. 97–CE–54–AD.

Applicability: BN–2A, BN–2B, and BN–2T series airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing detection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24489 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–60–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to The New Piper Aircraft, Inc. Model PA–46–310P and PA–46–350P airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 425–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–60–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-

down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96-NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD

Airplane models	Docket No.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Piper Model PA–46–310P and PA–46–350P airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

These airplane models are manufactured in Australia and are type certificated for operations 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.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 399 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

The New Piper Aircraft, Inc.: Docket No. 97–CE–60–AD.

Applicability: Models PA–46–310P and PA–46–350P airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24494 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–61–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to The New Piper Aircraft, Inc. (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 425–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–61–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered

roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
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96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
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96–NM–14–AD	Jetstream 4101	61 FR 2142
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96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model, P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	97–CE–60–AD.
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD.
Fairchild, Models F27 and FH227 series	97–NM–176–AD.

Airplane models	Docket No.
Lockheed Models	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Raytheon Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 2,140 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§ 39.13 [Amended]

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

Raytheon Aircraft Company.: Docket No. 97–CE–58–AD.

Applicability: Models E55, E55A, 58, 58A, 58P, 58PA, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes (formerly known as Beech Aircraft Corporation Model and series airplanes), (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations

associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24493 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 500, -500–A, -500–B, -500–S, -500–U, -520, -560, -560–A, -560–E, -560–F, -680, -680–E, -680FL(P), -680T, -680V, -680W, -681, -685, -690, -690A, -690B, 690C, -690D, -695, -695A, -695B, and 720 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Twin Commander Aircraft Corporation (Twin Commander) Models 500, -500–A, -500–B, -500–S, -500–U, -520, -560, -560–A, -560–E, -560–F, -680, -680–E, -680FL(P), -680T, -680V, -680W, -681, -685, -690, -690A, -690B, 690C, -690D, -695, -695A, -695B, and 720 airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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.

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Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

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The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500-B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace, Model G–159 series	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild, Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- Twin Commander Models 500, –500-A, –500-B, –500-S, –500-U, –520, –560, –560-A, –560-E, –560-F, –680, –680-E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, 690C, –690D, –695, –695A, –695B, and 720 airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.
- The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the

protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 811 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Twin Commander Aircraft Corporation: Docket No. 97–CE–57–AD.

Applicability: Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, 690C, –690D, –695, –695A, –695B, and 720 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to ''Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24495 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–3 and DC–4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–3 and DC–4 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in sever icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–173–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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346 fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–173–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. 97–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was

engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche, Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P,58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD

Airplane models	Docket No.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All McDonnell Douglas Model DC–3 and DC–4 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues)
- prohibit flight in severe icing conditions (as determined by certain visual cues)
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 300 McDonnell Douglas Model DC–3 and DC–4 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,960, or $60 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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

McDonnell Douglas: Docket 97–NM–173–AD.

Applicability: All Model DC–3 and DC–4 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(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. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: 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 September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24503 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model 40, 60, 70, and 80 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 Sabreliner Model 40, 60, 70, and 80 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane

in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–171–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.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Charles Riddle, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4144; fax (316) 946–4407.

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 97–NM–171–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. 97–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186

Docket No.	Manufacturer/airplane model	Federal Register citation
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche, Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	97–CE–60–AD
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.I. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- Certain Sabreliner Model 40, 60, 70, and 80 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may ocur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues); prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 283 Sabreliner Model 40, 60, 70, and 80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,560, or $60 per airplane.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sabreliner: Docket 97–NM–171–AD.

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

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing

conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

Issued in Renton, Washington, on September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24502 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, 551, and 560 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 Cessna Model 500, 501, 550, 551, and 560 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–170–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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Carlos L. Blacklock, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

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 97–NM–170–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. 97–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be

capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

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96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
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96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04AD	Dornier 228 Series	61 FR 2172
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96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche, Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, and P210R	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD

Airplane models	Docket No.
SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- Certain Cessna Model 500, 501, 550, 551, and 560 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues)
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 1,710 Cessna Model 500, 501, 550, 551, and 560 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,427 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $85,620, or $60 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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Cessna Aircraft Company: Docket 97–NM–170–AD.

Applicability: Model 500, 501, 550, 551, and 560 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

Issued in Renton, Washington, on September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24501 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–159 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Model G–159 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–172–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.

This information may be examined at the FAA, Transport Airplane

Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (707) 703–6098; fax (707) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–172–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. 97–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

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96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154

Docket No.	Manufacturer/airplane model	Federal Register citation
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

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Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Gulfstream Model G–159 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 141 Gulfstream Model G–159 series

airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $60 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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation (Formerly Grumman): Docket 97–NM–172–AD.

Applicability: All Model G–159 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

-Accumulation of ice on the upper surface of the wing aft of the protected area.

-Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

Issued in Renton, Washington, on September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24500 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–174–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–174–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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–174–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. 97–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric

conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183.
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180.
96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144.
96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace Series HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche, Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551,	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.I. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD

Airplane models	Docket No.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Mitsubishi Model YS–11 and YS–11A series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit sever icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 76 Mitsubishi Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries, Ltd [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Docket 97–NM–174–AD.

Applicability: All Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(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. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: 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 September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24499 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–176–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–14 and L–18 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–176–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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A,

FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

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 97–NM–176–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. 9–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
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96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
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96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151

Docket No.	Manufacturer/airplane model	Federal Register citation
95-NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions,and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
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Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche.	
Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
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Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA–approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Lockheed Model L–14 and L–18 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 120 Lockheed Model L–14 and L–18 series

airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,540, or $60 per airplane.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed: Docket 97–NM–176–AD.

Applicability: All Model L–14 and L–18 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps

extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

Issued in Renton, Washington, on September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24498 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fairchild Model F27 and FH227 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone (516) 256–7509; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–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. 97–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no

airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

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96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
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96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3-SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

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Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
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Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
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McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD

Airplane models	Docket No.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Fairchild Model F27 and FH227 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 426 Fairchild Model F27 and FH227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Fairchild Aircraft Corporation: Docket 97–NM–177–AD.

Applicability: All Model F27 and FH227 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

•If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

′ Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface farther aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

Issued in Renton, Washington, on September 10, 1997.

Darrell M. Pederson Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24497 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–175–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–175–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.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, Airplane Certification Office, 1601 Meacham Boulevard, Fort Worth, Texas.

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

SUPPLEMENTARY INFORMATION:

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 97–NM–175–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. 97–NM–175/AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions [believed to be composed of freezing drizzle or supercooled large droplets (SLD)] were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside of the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models:

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 213.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151

Docket No.	Manufacturer/airplane model	Federal Register citation
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules, described below, also would provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered roll controls and pneumatic deicing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes:

Airplane models	Docket No.
Aerospace Technologies of Australia, Models N22B and N24A	97–CE–49–AD.
Harbin Aircraft Mfg. Corporation, Model Y12 IV	97–CE–50–AD.
Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD.
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180	97–CE–52–AD.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	97–CE–53–AD.
Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD.
SOCATA—Groupe Aerospatiale, Model TBM–700	97–CE–55–AD.
Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD.
Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –600–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, and –680FL(P).	97–CE–57–AD.
Beech Aircraft Corporation (Raytheon), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD.
Beech Aircraft Corporation (Raytheon), Model 2000	97–CE–59–AD.
The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD.
Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA-E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD.
Cessna Aircraft Company, Models P210N, T210N, P210R, 501, and 551	97–CE–62–AD.
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD.
SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	97–CE–64–AD.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	97–NM–170–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	97–NM–171–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	97–NM–172–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	97–NM–173–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	97–NM–174–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	97–NM–175–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	97–NM–176–AD.
Fairchild, Models F27 and FH227 Series Airplanes	97–NM–177–AD.

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur as a result of exposure to severe icing conditions that are outside the icing limits for which the airplane was certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

There are approximately 8 Gulfstream America (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $300, or $60 per airplane.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Gulfstream American (Frakes Aviation): Docket 97–NM–175–AD.

Applicability: All Model G–73 (Mallard) and G–73T series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—-Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

- Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.
- All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

- Visible rain at temperatures below 0 degrees Celsius ambient air temperature.
- Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(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, Dallas Airplane Certification Office (ACO), ASW–150, FAA, Rotorcraft Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Dallas ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Dallas 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 September 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24496 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerostar Aircraft Corporation (Aerostar) Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

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 should 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 that summarizes 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 No. 97–CE–56–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 series	61 FR 2180
96–CE–04–AD	Dornier 228 series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA 226/SA227 series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 series	61 FR 2166
96–NM–18–AD	Dornier 328–100 series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA series	61 FR 2151
96–NM–146–AD	Aerospatiale ATR–42/ATR–72 series	61 FR 2147

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the proposed rules described below would also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These proposed rules would apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 NPRM's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. The proposed rules affect the following airplanes.

Airplane models	Docket No.
Aerospace Technologies of Australia Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180	97–CE–52–AD
Pilatus Aircraft Ltd. Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd. Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD
SOCATA—Groupe Aerospatiale Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Twin Commander Aircraft Corporation Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, and –695B.	97–CE–57–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc. Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD

Airplane models	Docket No.
SIAI-Marchetti S.r.l. (Augusta) Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace Model G–159 series	97–NM–172–AD
McDonnell Douglas Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild Models F27 and FH227 series	97–NM–176–AD
Lockheed Models	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Aerostar Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 526 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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), 40113, 44701.

§39.13 [Amended]

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

Aerostar Aircraft Corporation: Docket No. 97-CE–56-AD.

Applicability: Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in severe icing conditions.

• All wing icing inspection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations(14 CFR 43.11).

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

(d) 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, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 9, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24485 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 260

[Docket No. OST–97–2622]

Truth in Airfares

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments, petition for rulemaking.

SUMMARY: The Department is inviting interested persons to comment on a petition for rulemaking filed by Consumers Union of U.S., Inc. (''CU'') on June 16, 1997. The petition asks the Department to establish a ''Truth in Airfares'' regulation that would require commercial passenger carriers to disclose directly to consumers the most recently available average fare and lowest fare charged by the carrier for the route and class of service quoted to an inquiring party. CU also requests that the Department require the carriers to make this fare information available to computer reservations system vendors as well.

DATES: Comments must be submitted on or before November 17, 1997. Reply comments must be submitted on or before December 15, 1997.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–97–2622, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file eight copies of its comments. Comments filed prior to the publication of this notice will also be considered.

FOR FURTHER INFORMATION CONTACT: Jim Craun, Director of the Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW.,

Washington, DC 20590 at (202) 366–1032 or (202) 366–7638 (FAX).

SUPPLEMENTARY INFORMATION: In its petition, CU stated that airfares have dropped during the past 15 years. As measured on an inflation-adjusted basis, average fares have decreased from 12.7 cents per mile in 1981 to eight cents per mile today, according to CU. CU also indicated that more than 550 million passengers traveled on commercial flights on U.S. airlines in 1996 and many of these trips were made possible because of the lower fares. Despite the large number of airline passengers and the increase in passenger travel [1] since airline deregulation, however, CU claims that it is almost impossible for passengers to determine whether they are getting a good, fair, or poor value, because of the way in which many airlines set their ticket prices.

In support of its claim, CU cited a study of more than three million discount airline tickets purchased on 34 of the most heavily traveled domestic routes in 1996. (CU published an article on the study in the July 1997 issue of Consumer Reports and attached a copy of the article as part of this petition.) Based on an analysis of the average restricted coach class fares on each route, CU concluded that airline ticket prices for a given class of service between two points can vary by hundreds of dollars depending upon the availability of a wide range of fares, with availability determined not so much by the number of seats actually physically available but by how many seats the airline—in its sole discretion—chooses to supply at each price. CU also asserts that, at any time, sale fares that are available in limited quantities can suddenly appear and disappear. According to CU, these constant fare changes confuse customers and effectively remove price information that helps consumers assess the value of the transportation.

CU claims that the lack of reliable ''fair market price'' or ''going rate'' information available to the consumer at the time of ticket purchase establishes a barrier to effective comparison shopping and price-based bargaining by the ordinary consumer. This barrier gives an unfair advantage to a number of airlines (including the very largest airlines) in the buyer-seller transaction. The airlines can allegedly engage in opportunistic pricing practices because the consumer lacks the information needed to counter these practices.

CU stated that consumers cannot rely on travel agents to solve the problem and cited, in support, an unsourced consumer test conducted by representatives of several state public interest research groups. In the test, fourteen phone calls were made to nine travel agents and airlines requesting the ''lowest'' advance-purchase round-trip fare from Boston to Houston on specified travel dates and at specified times. The requests netted ten different fare quotes ranging from $504 to $1,323.68 with six of the ten different fare quotes coming from travel agents.

CU's Petition

In order to address these issues, CU has filed a petition that asks the Department to adopt a regulation which would require airlines, their agents, and computer reservations system (CRS) vendors to disclose the average and lowest fares an airline charges for each class of service on a route to any person to whom they quote fares for a specific class of service on that route. The petitioner also requests that the Department require that airlines make this information available to CRSs and that the information be based on the latest available quarterly fare data in Databank #1 of the Department's Origin-Destination Survey of Airline Passenger Traffic. (Presumably, CU's petition applies to fares in domestic markets only since the Department is prohibited by regulation from publicly disclosing international fare data in the Origin-Destination Survey of Airline Passenger Traffic.) CU also asks that the Department either supply to each carrier the data to be disclosed or allow each carrier to calculate the data to be disclosed according to calculation standards prescribed by us and based on the information the carrier submits to the Department for inclusion in Databank ı1 of the Origin-Destination Survey of Airline Passenger Traffic.

CU states that its petition provides the substance and the elements of the rule it is seeking but not a proposed text for a rule. However, since the purpose of its request is to give consumers bargaining power by increasing consumer information, the petitioner considers it important that a final rule cover as many consumer transactions as practicable and that neither the scope nor the specific provisions of the rule be so narrow as to limit the effectiveness of the rule.

CU stated that by knowing both the average fare and the lowest fare charged by route, by airline, and by class of service, consumers would be armed with two key benchmarks of value that are critical to making an informed purchase decision. These two pieces of information, used together, would show the relevant range of prices with the average fare providing a broad indication of the relative value available by airline and the lowest fare indicating the market-clearing price. According to the petitioner, easy access to this information would enhance comparison shopping, informed consumer negotiation, price competition and market efficiency.

Request for Comments

In response to an increasing number of inquiries from consumers about domestic airline prices, the Department recently published the first edition of a report entitled Domestic Airline Fares Consumer Report. This report provides information about average prices being paid by consumers in the 1,000 largest domestic city-pair markets for the third quarter of 1996. In addition to the Department's commitment to provide fare information to consumers in this report, we have decided to consider further the issues raised by CU. We invite interested persons to comment on all aspects of the petition including, but not limited to, whether such a rule should be adopted and, if so, should the rule apply only to airlines, or to airlines as well as travel agents and discount travel brokers, such as consolidators.

We will decide after reviewing those comments whether we should propose a rule as requested by CU. To the extent that commenters provide quantified estimates of the value or cost of implementing such a regulation, we ask that they provide specific supporting details regarding the methodologies used in determining these benefits and costs. We also encourage commenters to provide information on other possible alternatives for accomplishing the goals sought by CU in this petition.

Issued in Washington, DC on September 8, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–24567 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–62–P

[1] To quantify CU's statement regarding the increase in passenger travel, the Department notes that there were approximately 250 million domestic passengers traveling on U.S. airlines in 1978.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 185–0047b; FRL–5888–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Northern Sierra Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern a wide range of administrative and traditional source category rules.

The intended effect of proposing approval of these rules is to regulate emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X) and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 16, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Northern Sierra Air Quality Management District, 540 Searls Avenue, Nevada City, CA 95959.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns Northern Sierra Air Quality Management District Rule 101, Title; Rule 102, Definitions; Rule 202, Visible Emissions; Rule 203, Exceptions to Rule 202; Rule 204, Wet Plumes; Rule 206, Incinerator Burning; Rule 207, Particulate Matter; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel Steam Generator Facility; Rule 210, Specific Contaminants; Rule 212, Process Weight Table; Rule 213, Storage of Gasoline Products; Rule 221, Reduction of Animal Matter; Rule 222, Abrasive Blasting; Rule 225, Compliance; Rule 300, General Definitions; Rule 301, Compliance; Rule 313, Burn Day; Rule 314, Minimum Drying Times; Rule 315, Burning Management Requirements; and Rule 317, Mechanized Burners Requirements. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 22, 1997.

John Wise,

Acting Regional Administrator.

[FR Doc. 97–24417 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 167–0036b; FRL–5888–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern an emergency episode rule. The intended effect of proposing approval of this rule is to update the episode criteria and to eliminate redundant reporting requirements in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 16, 1997.

ADDRESSES: Written comments on this action should be addressed to: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of this rule is available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E., Copley Drive, Diamond Bar, CA 91765.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4) Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on January 31, 1996. For further information, please see the information

provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 22, 1997.

John Wise,

Acting Regional Administrator.

[FR Doc. 97–24416 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–24–1–7102; FRL–5892–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Proposed Approval of a Revision to the New Mexico State Implementation Plan—Enhanced Monitoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 110 of the Clean Air Act (the Act), as amended in 1990, EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) addressing revisions to Air Quality Control Regulation (AQCR) 702 concerning permits. The State's revision expands the types of testing and monitoring data, including stack and process monitoring, which can be used directly for compliance certifications and enforcement.

DATES: Comments on this proposed action must be received in writing on or before October 16, 1997.

ADDRESSES: Comments should be mailed to Jole C. Luehrs, Chief, Air Permits Section (6PD–R), EPA, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

EPA, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2377.

New Mexico Environmental Improvement Board, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Mary Stanton, Air Permits Section (6PD–R), EPA, Dallas, Texas, 75202–2377, telephone (214) 665–8377.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA has published a number of ''reference test methods'' and, in order to assure uniformity in the application of emission standards, has required sources to establish compliance with emission standards by use of those reference test methods. In theory, a source would conduct testing on a periodic basis utilizing these methods and would rely on the comprehensive nature of this testing to assure compliance on a day to day basis.

In the interim, more accurate emission monitoring devices have been developed. In addition, EPA, the States, and the regulated community have gained a better understanding of the specific facility and pollution control device operating parameters that control emissions. Many sources currently determine compliance with permitted limits either through the use of continuous emission monitors or by monitoring key parameters of their production processes and pollution control devices.

Section 113(a) of the Act provides that the Agency may bring an enforcement action on the basis of any information available. However, in *United States* versus *Kaiser Steel Corporation,* the District Court ruled that, because of what it perceived to be limitations in EPA's regulations, only reference method stack testing could be used to establish violations of permit limits, notwithstanding irrefutable scientific evidence that otherwise demonstrated thousands of violations. In the 1990 amendments to the Act, Congress overrode the *United States* versus *Kaiser Steel Corporation* decision, providing that the duration of the violation could be established by any credible evidence (including evidence other than the applicable test method).

The EPA believes that existing SIPs (nationwide) are inadequate for States or EPA to fully implement the Act, because the SIPs may presently be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations. On June 9, 1994, EPA issued a call to the State of New Mexico to revise its SIP to clarify that any monitoring approved for the source (and included in a Federally enforceable operating permit) may form the basis of the compliance certification, and that any credible evidence may be used for purposes of enforcement in Federal court.

II. EPA Evaluation

On November 10, 1994, New Mexico made an official plan submission in response to EPA's SIP call. New Mexico submitted revisions to AQCR 702, which provides that data which has been collected under the enhanced monitoring and Operating Permit programs can be used for compliance certifications and enforcement actions. Specifically, section R of the revisions to AQCR 702 authorizes this data to be used for compliance certifications, and section S authorizes this data to be considered for enforcement actions.

This revision will enhance the State's capability for determining compliance with, and for establishing violations of, the underlying emission limitations.

III. Proposed Action

The EPA reviewed these revisions to the New Mexico SIP and is proposing to approve sections R and S of AQCR 702 as submitted because they meet the requirements of section 110 of the Act. The EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. The EPA will consider any timely submitted comments prior to EPA's taking final action on this proposed rule. Comments received by the date indicated above will be considered in the development of EPA's final rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** (FR) on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do

not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Company*. v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Enhanced monitoring, Incorporation by reference, Intergovernmental relations.

Authority: 42 U.S.C. sections 7401–76718.

Dated: August 15, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–24552 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 62, No. 179

Tuesday, September 16, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to American Cyanamid Company of Princeton, New Jersey, an exclusive license to Serial No. 08/756,301, filed November 25, 1996, entitled ''A Baculovirus for the Control of Insect Pests.'' Notice of Availability for Serial No. 08/756,301 was published in the **Federal Register** on August 7, 1997.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Cyanamid Company has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–24438 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–03–U

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention, U.S. Plant Patent Application Serial No. 08/900,007, entitled ''TifEagle Dwarf Bermudagrass'' is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to The University of Georgia Research Foundation of Athens, Georgia, an exclusive license for U.S. Plant Patent Application Serial No. 08/900,007.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments to: USDA, ARS, MWA, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 North University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as the University of Georgia Research Foundation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–24439 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–055N]

Meeting of the Meat and Poultry Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Meat and Poultry Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a meeting on October 8 to October 10, 1997, to discuss food safety initiatives. Specific topics to be discussed include the Seared Steak and the Cooking Time and Temperature for Hamburger issues.

DATES: The meeting will be held from 1:00 to 5:00 p.m. on October 8 and from 8:00 a.m. to 5:00 p.m. on October 9 and October 10, 1997.

ADDRESSES: The meeting will be held in Franklin Court Suite 3709 at 1099 14th Street, NW, in Washington, DC. NACMCF wishes to encourage persons with information and data on the issues to present their comments to the participants. Those persons interested in making presentations or providing comments should mail or fax their name, title, firm or agency name, address, and telephone to Dr. Richard L. Ellis, Director, Scientific Research Oversight Staff, Department of Agriculture, 6913 Franklin Court, 1099 14th Street, NW, Washington, DC 20250-3700; fax (202) 501–7628. Comments and requests also may be provided by E-mail to: richard.ellis@usda.gov.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is seeking guidance and advice from the Subcommittee on a clear scientific basis

for recommendations FDA will propose and how these issues should be addressed in the Food Code. The Subcommittee also will be developing microbial hazard identification guides for very small meat and poultry establishments.

This meeting will be open to the public on a space available basis. Comments may be made before or after the meeting. All comments received will become part of the public record of this meeting.

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services about the development of microbiological criteria to assess the safety and wholesomeness of food. NACMCF also provides guidance to the Departments of Commerce and Defense.

Done at Washington, DC, on September 9, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–24436 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Thompson Creek Mine Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of opportunity to comment.

SUMMARY: The Salmon and Challis National Forest is providing notice that a 60 day comment period will be initiated on September 22, 1997 for review of documents prepared in support of the Draft Supplemental Environmental Impact Statement (DSEIS) for the proposed supplement to the Thompson Creek Mine Plan of Operation. The purpose of the comment period is to consider comments prior to release of the DSEIS. The comment period will begin on September 22, 1997 and continue for 60 days concluding on November 21, 1997. All comments must be received in writing by this date. Comments can be sent to: Salmon and Challis National Forest, Thompson Creek Mine SEIS Coordinator, RR2 Box 600, Hwy 93 S, Salmon, ID 83467. The documents will be available for review at the Yankee Fork Ranger District, Clayton, ID.

FOR FURTHER INFORMATION CONTACT: Liz McFarland, TCM SEIS Coordinator, (208) 756–5139.

Dated: September 10, 1997.

Stephanie Phillips,

Acting Forest Supervisor.

[FR Doc. 97–24505 Filed 9–15–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission which was to have convened at 1:00 p.m. and adjourned at 5:00 p.m. on Wednesday, September 17, 1997, at the Holiday Inn, Downtown, 700 King Street, Wilmington, Delaware 19801, has been rescheduled for Wednesday, September 24, 1997, at the same time and place.

The original notice for the meeting was announced in the **Federal Register** on August 26, 1997, FR Doc. 97–22577, 62 FR 55221–45222.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, September 11, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–24597 Filed 9–11–97; 4:45 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12 p.m. on October 29, 1997, at the Westin Hotel, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to discuss civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact committee Chairperson Bill Wassmuth, 206–233–9136, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 8, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–24541 Filed 9–15–97; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 917]

Approval for Manufacturing Authority; Solectron Corporation (Electronic/Computer/Telecommunication Equipment) Within Foreign-Trade Zone 18 San Jose, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, San Jose Distribution Services, operator of Foreign-Trade Zone 18, has requested authority under § 400.32(b)(2) of the Board's regulations on behalf of Solectron Corporation to manufacture electronic/computer/telecommunication equipment under zone procedures within FTZ 18, San Jose, California (filed March 7, 1997; FTZ Doc. 12–97; 62 FR 12792, 3/18/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of September 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–24466 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 918]

Expansion of Foreign-Trade Zone 21; Charleston, South Carolina Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, Charleston, South Carolina, area, for authority to expand FTZ 21 to include four additional sites in the Charleston, South Carolina, area, was filed by the Board on March 7, 1997 (FTZ Docket 13–97, 62 FR 12793, 3/18/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 21 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 5th day of September 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–24467 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 919]

Approval of Manufacturing Activity within Foreign-Trade Zone 62 Brownsville, TX, Amfels, Inc. (Offshore Drilling Platforms/Shipbuilding)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Brownsville Navigation District, grantee of FTZ 62, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of AMFELS, Inc., to manufacture mobile offshore drilling platforms under zone procedures within FTZ 62, Brownsville, Texas (filed 2–25–97, FTZ Docket A(32b1)–1–97; Doc. 67–97, assigned 8–20–97)

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same, in terms of products involved, to activity recently approved by the Board (§ 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and further subject to the following conditions: (1) Any foreign steel mill products admitted to FTZ 62 for the AMFELS, Inc., activity including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and, (2) in addition to the annual report, AMFELS, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 5th day of September 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–24468 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order listed below.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 13, 1997, the Department of Commerce (Commerce) published a Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations (62 FR 43316). In that notice, an interested party, Chemical Products Corporation, was inadvertently listed as an objector to the revocation of industrial belts and components and parts thereof, whether cured or uncured, except synchronous & v belts from Germany. This firm did not file such an objection. Chemical Products Corporation did however object to the revocation of precipitated barium carbonate from Germany. In addition, our August 13, 1997 notice inadvertently did not include the order on precipitated barium carbonate from Germany. This notice serves to correctly identify the sole objector for industrial belts and components and parts thereof, whether cured or uncured, except synchronous and v belts from Germany and to notify the public that we no longer intend to revoke the antidumping duty order on precipitated barium carbonate from Germany.

Antidumping Proceeding

A–428–802

Germany
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, Except
Synchronous & V belts
Objection Date: June 30, 1997
Objector: Gates Rubber Company

Contact: Ron Trentham at (202) 482–4793

A–428–061

Germany
Precipitated Barium Carbonate
Objection Date: June 13, 1997
Objector: Chemical Products Corporation
Contact: Tom Futtner at (202) 482–3814

Dated: September 5, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–24566 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–015]

Television Receivers, Monochrome and Color, From Japan: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: On July 3, 1996, the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's (the Department's) remand determination in this case. See *Fujitsu General Ltd.* v. *United States*, 88 F.3d 1034 (Fed. Cir. 1996). As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the Customs Service to liquidate entries subject to this review.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Sheila Forbes, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 and (202) 482–0065, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department published its final results of administrative review of television receivers, monochrome and color, from Japan covering imports from 11 manufacturers/exporters during various periods, including imports from Fujitsu General Limited (FGL) for the periods March 1, 1986 through February 28, 1987; March 1, 1987 through February 29, 1988; and March 1, 1989 through February 28, 1990. *See* Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review, 56 FR 25392. Subsequently, FGL challenged the final results before the United States Court of International Trade (CIT). Following a voluntary remand, the Department issued a redetermination which was affirmed by the CIT on March 14, 1995. See *Fujitsu General Limited* v. *United States*, 883 F.Supp. 728 (CIT 1995). Subsequently, an appeal was filed by FGL.

On July 3, 1996, the U.S. Court of Appeals for the Federal Circuit upheld the Department's remand determination. See *Fujitsu General Limited* v. *United States*, 88 F.3d 1034 (Fed. Cir. 1996). As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to this review.

Amendment to Final Result of Review

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative review for television receivers, monochrome and color, from Japan, with respect to FGL, for the above-referenced periods. The revised weighted-average margin for these periods is 26.17 percent.

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries of the subject merchandise made by FGL and covered by this review. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the cash deposit rate for FGL which will be effective upon publication of these amended final results of review for all shipments of the subject merchandise made by FGL entered, or withdrawn from warehouse, for consumption on or after the publication date, and will remain in effect until publication of the final results of the next administrative review, will be 26.17 percent.

Dated: September 10, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24563 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 13, 1997, the Department of Commerce published the preliminary results of its 1995–96 administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. The review covers one manufacturer/exporter, Ausimont S.p.A, for the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. We received comments from Ausimont and E.I. DuPont de Nemours & Company, the petitioner in this proceeding. We have changed our preliminary results as explained below. The final margin for Ausimont is listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Background

On May 13, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1995–96 administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy (62 FR 26283).

We gave interested parties an opportunity to comment on the preliminary results. We received briefs from Ausimont S.p.A (Ausimont) and E.I. DuPont de Nemours & Company (DuPont). There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The product covered by this review is granular PTFE resins, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. See Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classifiable under item number 3904.61.00 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and customs purposes only. The written description of the scope remains dispositive.

The review covers one Italian manufacturer/exporter of granular PTFE resin, Ausimont, and the period August 1, 1995 through July 31, 1996.

Analysis of Comments Received

Comment 1: Ausimont contends that the Department erred in using the purchase order date or blanket order date as the date of sale in the U.S. market. The firm asserts that the Department should have used the date of invoice as the date of sale and states that this is the Department's current practice and its intention as stated in the proposed regulations (citing Antidumping Duties: Proposed Rule, 61 FR 7308, February 27, 1996), finalized in the same form on May 19, 1997 (62 FR 27296). Ausimont also cites to a March 29, 1996 memorandum signed by the Assistant Secretary for Import Administration that implements the date-of-invoice methodology effective April 1, 1996.

DuPont replies that the proposed regulations do not oblige the Department to use the date-of-invoice methodology. The petitioner points out that the Department has the discretion to use a date other than the date of invoice if such a date better reflects the date on which the exporter establishes the material terms of sale. The petitioner believes that the reported purchase and blanket order dates more adequately reflect the date on which material terms of sale were established for most of Ausimont's U.S. sales. Therefore DuPont asserts that the Department should continue to use the purchase and blanket order dates as the dates of sale for identifying contemporaneous home market sales.

Department's Position: The record indicates that Ausimont's U.S. prices and quantities are not usually fixed before the invoice date. Thus, we continue to hold that the date of invoice is the correct date for determining date of sale. (See Antidumping Duties: Proposed Rule, 61 FR 7308, February 27, 1996, section 351.401(i) at 7381, and preamble at 7330; March 29, 1996 memorandum from the Assistant Secretary for Import Administration to the Deputy Assistant Secretaries for Import Administration; Certain Internal-Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, February 6, 1997.)

Comment 2: Ausimont contends that, in calculating the constructed export price (CEP) profit ratio based on Ausimont's financial statements, the Department erred by failing to include manufacturing costs for U.S. operations in the calculation of the amount of profit for the firm, while attributing the profit ratio to those costs in deriving a CEP-profit adjustment. Ausimont states that this results in a profit allocation that is not an ''apples-to-apples'' comparison in its calculation and application and creates an unfair and inflated apportionment of profit both to Ausimont's further-manufacturing operations and to its U.S. selling activities. Respondent contends that the Department should recalculate the profit ratio by including those manufacturing costs in the total expense amount.

DuPont responds that it agrees that the Department's profit-ratio calculation is incorrect. However, DuPont argues that, rather than correct its calculation, the Department should calculate a CEP-profit ratio based on the operating income and operating expenses for Ausimont U.S.A. and the Fluoride Specialties segment of Ausimont SpA. DuPont states that it is the Department's policy to use an operating profit rather than a net profit.

In rebuttal to DuPont's argument, Ausimont states, among other things, that there is no precedent for using an operating profit in the calculation of a CEP-profit ratio. Respondent points out that in section 351.402(d)(1) of its proposed (and now finalized) regulations the Department indicated a preference for using the aggregate of expenses and profit in calculating total expenses and total actual profit. Ausimont also refers to the Department's final results concerning Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands (62 FR 18476, April 15, 1997) and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea (62 FR 18404, April 15, 1997) as an affirmation of this methodology. Therefore, Ausimont maintains that the Department should continue to use total expenses and total actual profit to determine CEP profit for the final results. Ausimont also states that it continues to protest Petitioner's attempt to raise an untimely affirmative argument in Petitioner's rebuttal brief.

Department's Position: We agree with Ausimont that we erred in the calculation of its CEP-profit ratio by failing to include manufacturing costs for U.S. operations in the CEP-profit ratio calculation which we applied to total U.S. expenses. We also agree with Ausimont that it is our normal practice to use the aggregate of all expenses and profit in the calculation of CEP profit. The Department's general practice in the calculation of profit rates is to incorporate *all* selling, general and administrative expenses and expenses normally employed in the calculation of the cost of production. In this case, if we were to use Ausimont's operating profit as part of the CEP-profit calculation, we would necessarily exclude from that calculation certain expenses that we would usually include were we to compute the cost of production for Ausimont. Therefore, it is more appropriate in this instance for the calculation of CEP profit to start with Ausimont's reported net income. As in this case, where we must compute CEP profit using information from financial statements, our methodology for calculating total cost for the purpose of determining CEP profit, although subject to data limitations, is generally the same as that used to calculate the cost of manufacture and SG&A expenses for purposes of determining the cost of production and constructed value. Thus, we included the total cost of materials and fabrication and SG&A expenses in our calculation of Ausimont's CEP profit.

This practice for calculating a net profit is consistent with the Statement of Administrative Action (H.R. Doc. 316, Vol. 1 103d Cong., 2d sess. (1994)) (SAA), which repeatedly gives reference to total production and selling expenses in determining CEP profit. For example, when discussing alternatives for the use of financial reports, the SAA states that the use of reports ''will depend on the detail in which such reports break down total production and selling expenses and profits' (SAA at 825, emphasis added). In addition, in cases in which we have explained the calculation of

CEP profit, we frequently refer to the term ''total profit'' and ''all expenses'', thus making it clear that the calculation of CEP profit is based on the company's profits net of all expenses, i.e., net income. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18440 (April 15, 1997); Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326, 30352 (June 14, 1996). Therefore, we disagree with DuPont that an operating profit is appropriate for determining a CEP-profit adjustment in this instance. For these final results, we have calculated respondent's CEP-profit ratio based on total profit and total expenses and ensured that we have included cost for manufacturing operations in the United States in the computation of the profit rate to apply to U.S. expenses.

With regard to respondent's claim that it was inappropriate for the Department to accept petitioner's untimely submission of an affirmative argument, we disagree with the respondent. The Department has the right to seek comments or additional information at any time during a proceeding. 19 CFR 353.38(a). The CEP-profit calculation is a new methodology to implement provisions of the URAA. Therefore, the Department chose to exercise its prerogative to consider the argument and solicit rebuttal from respondent in order to more fully explore the issue. The Department has now had the opportunity to consider comments and make a fully informed determination.

Final Results of the Review

We determine the that following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/95–07/31/96	5.95

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Ausimont's sales were all through its subsidiary in the United States. Therefore, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on entries during the period of review (POR). While the Department is aware that the entered value of sales during the POR is not necessarily equal to entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Ausimont will be 5.95 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, a previous review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 USC 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22 (1997)).

Dated: September 9, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24562 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative review.

SUMMARY: On May 12, 1997, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Japan. This review covers one producer/exporter, NKK Corporation of Japan (''NKK''), entries of drill pipe during the period August 11, 1995 through July 31, 1996, and entries of OCTG other than drill pipe during the period February 2, 1995 through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. After reviewing the comments received, we have determined not to change the results from those presented in the preliminary results of review.

This review was initiated in response to requests by importers, Helmerich & Payne, Inc. (''H&P'') and Caprock Pipe and Supply (''Caprock''), for a review of

NKK and HEBRA AS (''HEBRA''), respectively. Although we initiated a review of both NKK and HEBRA, we rescinded the review with respect to HEBRA because Caprock timely withdrew its request for review.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–1395 (Bezirganian), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

The Department published an antidumping duty order on OCTG from Japan on August 11, 1995 (60 FR 41058). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1995/96 review period on August 12, 1996 (61 FR 41768). On August 28, 1996, H&P, an importer of drill pipe, requested an administrative review of sales of subject merchandise produced by NKK and imported, or withdrawn from a foreign trade zone, during the review period (August 11, 1995, through July 31, 1996) for drill pipe. We initiated a review of NKK on September 17, 1996 (61 FR 48882). Caprock, an importer of used OCTG, requested a review of HEBRA (which Caprock identified as a Norwegian-based export company), but later timely withdrew that request.

On May 12, 1997, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on OCTG from Japan (62 FR 25889). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this order is OCTG, hollow steel products of circular cross-section, including only oil well casing, tubing and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Many of these HTSUS numbers reflect changes made to the HTSUS since the less-than-fair value (''LTFV'') investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

The period of review (''POR'') is August 11, 1995 through July 31, 1996, for drill pipe, and February 2, 1995 through July 31, 1996, for OCTG other than drill pipe. This review covers entries of OCTG produced by NKK.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from H&P on June 10, 1997. H&P requested a public hearing, which was held on July 2, 1997.

H&P's Comments

H&P argues that sales of merchandise entered by H&P during the POR are not subject to this administrative review because the dates of sale associated with these entries are prior to the POR, and, in fact, prior to the imposition of the antidumping order.

H&P states that it purchased the merchandise from MC Tubular Products, Inc. (''MCTP''), a Japanese corporation, and imported it into a foreign trade zone. H&P indicates it believes MCTP had purchased this merchandise from Mitsubishi Corporation, a Japanese trading company, and that Mitsubishi Corporation (''MC'') had purchased the merchandise from NKK, an unaffiliated Japanese manufacturer. Furthermore, H&P indicates that it was its understanding that NKK had known that the ultimate destination of the merchandise was the United States.

H&P concludes that ''[g]iven the structure of these transactions, the sale from NKK to Mitsubishi Corporation constituted an exporter's price sale (see *e.g.*, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31747 (July 11, 1991); Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France *et al.*; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28428 (June 24, 1992),'' and, ''[a]s such, the date of sale should be considered to be the date of NKK's invoice to MC.'' Case Brief of H&P (June 10, 1997) at 3. Alternatively, H&P submits that the date of the purchase agreement between H&P and MCTP could be the date of sale. H&P notes that regardless of which date is considered the date of sale, the sale dates for the merchandise in question were prior to the effective date of the order in this case, and thus should not be subject to the assessment of antidumping duties. H&P's submission dated November 4, 1996, at 3.

H&P relies upon *General Electric* v. *United States*, 17 CIT 268 (1993) (''*General Electric*'') in support of its argument that sales prior to the period of review are not subject to review (see page 3 of H&P's case brief) and ''should not be subject to the assessment of antidumping duties'' (*see* H&P submission, November 4, 1996, at 3). H&P states that the plaintiff in the *General Electric* case argued that since entries occurred during the POR, the Department was required to calculate a margin for the sales even if the sales

were outside the POR. H&P notes that in *General Electric,* the Department requested a remand since those sales identified by the plaintiff which occurred before the POR should have been excluded from the antidumping duty calculations. H&P further notes that the Court of International Trade (''CIT'') agreed with this Department position and ordered a remand to exclude those sales made prior to the POR from the calculation of the assessment rate. Thus, H&P concludes that the Department must exclude the subject sales from administrative review, and requests the Department to instruct U.S. Customs to liquidate the entries of this merchandise without the assessment of antidumping duties.

Department's Position

Section 751(a)(2) of the Act specifies that, for the purposes of a review under section 751(a)(1)(B), the Department is to determine ''the normal value and export price (or constructed export price) of each *entry* of the subject merchandise, and * * * the dumping margin for each such *entry*.'' 19 U.S.C. 1675(a)(2)(A)(i) (emphasis added). Because H&P requested a review of NKK merchandise, and because there were entries of NKK merchandise during the POR, we requested that NKK submit a complete response to our antidumping questionnaire. NKK's failure to provide such a response to the questionnaire warrants the application of facts available in determining the appropriate margin. Pursuant to section 1675(a)(2)(C) of the Act, the margin determination shall be the basis for both the assessment of antidumping duties and the deposit of estimated antidumping duties. Thus, as discussed below, the assessment and cash deposit rates for NKK will be 44.20 percent, the highest rate from the petition.

The circumstances in *General Electric* differed from those in this review. The issue before the CIT in *General Electric* was whether the Department properly calculated the amount of antidumping duties to be assessed on all entries during the POR. In *General Electric*, the Department reviewed sales rather than entries during the POR, and therefore could not derive duties on an entry by entry basis. As the Department stated in the final results of the administrative review being reviewed by the CIT, ''[s]ince units entered and units sold are almost identical in purchase price situations, we can collect a close approximation of the total dumping duty liability by calculating importer-specific per-unit amounts for sales during the period of review and applying those per-unit amounts to entries during the period.'' The CIT ruled that by examining the amount of dumping on sales during the POR, the Department would assess the correct amount of antidumping duties on all of General Electric's entries during the POR. While the parties in *General Electric* focused on the proper way to assess entries during the POR, there was no dispute over whether entries should have been assessed antidumping duties. As a result, *General Electric* does not support H&P's argument that entries that occurred during the POR should be excluded from administrative review if sales occurred outside the POR.

In this review, H&P has not argued that the POR entries could not be linked to the sales, or that the Department intended to base its calculations only upon U.S. sales during the POR. Unlike *General Electric,* in this administrative review the Department never suggested that it would diverge from its preferred practice for reviewing EP (formerly purchase price) transactions. Thus, the Department requested that respondents respond fully to the Department's questionnaire, including reporting all entries of subject merchandise during the POR that were associated with U.S. sales. The September 19, 1996, questionnaire sent to NKK indicated, at page C–1, that the respondent should ''[r]eport each U.S. sale of merchandise *entered for consumption* during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR * * *'' (emphasis added).

Furthermore, the Department's notice of opportunity to request a review of the antidumping order on OCTG stated that ''[i]f the Department does not receive, by August 31, 1996, a request for review of *entries* covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered'' (emphasis added). See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 61 FR 41768, 41771. Therefore, it was clear that all POR entries would be subject to the review process, regardless of whether the date of sale was within the POR. See Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil, 62 FR 43504, 43510 (August 14, 1997).

H&P indicated that a Department official had confirmed ''that a full review of *sales* made during the relevant period by NKK will result from the filing of [its] administrative review request dated August 28, 1996.'' Page 1 of H&P's September 4, 1996, submission, at 1 (emphasis added). However, such a full review would have been consistent with normal practice, since typically EP sales made during the POR are associated with entries during the POR. In fact, in part because of NKK's failure to respond to the Department's questionnaire, it is not clear from the record of this review that NKK did not make U.S. sales during the POR, or that there were no additional POR entries into the United States of subject merchandise produced by NKK. Furthermore, H&P's admission that various dates may be considered the date of sale, the speculative nature of its description of stages of the sales process, and NKK's failure to provide a complete response to the Department's questionnaire casts further doubt upon any assertions regarding POR entries of subject merchandise produced by NKK.

As indicated in our preliminary results, NKK's failure to respond to our questionnaire requires the Department to resort to the use of facts available. For these final results we have continued to assign to NKK the corroborated petition rate of 44.20 percent, which constitutes the highest rate for any company for the same class or kind of merchandise from the same country from this or any prior segment of the proceeding. See Oil Country Tubular Goods from Japan; Notice of Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of Antidumping Administrative Review, 62 FR 25889, 25890 (May 12, 1997).

Final Results of Review

As a result of this review we have determined that the following margin exists for entries of drill pipe during the period August 11, 1995 through July 31, 1996, and for entries of OCTG other than drill pipe during the period February 2, 1995 through July 31, 1996:

OCTG

Producer/manufacturer/exporter	Weighted-average margin (percent)
NKK	44.20

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate

entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for NKK will be the rate for the firm as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will continue to be 44.20 percent, which was the ''all others'' rate in the LTFV investigation.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 9, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24470 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of the 1995–1996 antidumping administrative review of Sulfanilic Acid from the People's Republic of China.

SUMMARY: On May 12, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). This review covers the period August 1, 1995 through July 31, 1996, and all PRC exporters of the subject merchandise.

We gave all interested parties an opportunity to comment on our preliminary results. After we reviewed the comments received, the margins in the final results did not change from those presented in the preliminary results.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Kristen Smith or Kristen Stevens, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (April 1997).

Background

On May 12, 1997, the Department published in the **Federal Register** (62 FR 25917) the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (57 FR 37524, August 19, 1992). This review covers exports of subject merchandise to the United States for the period August 1, 1995 through July 31, 1996, and all PRC exporters of sulfanilic acid, including, but not limited to, the following thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Bejing; Hainan Garden Trading Company; Yude Chemical Company and Shunping Lile. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid. Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2921.42.22 and 2921.42.90. Although the HTS subheadings are provided for convenience and customs

purposes, our written description of the scope of this proceeding is dispositive.

Use of Facts Otherwise Available

Only two firms, Yude and Zhenxing, responded to the Department's questionnaire and demonstrated that they are entitled to a separate rate. All firms that have not demonstrated that they qualify for a separate rate are deemed to be part of a single enterprise under the common control of the government (the ''PRC enterprise''). Therefore, all such entities receive a single margin, the ''PRC rate.'' We preliminarily determine, in accordance with section 776(a) of the Act, that resort to the facts otherwise available is appropriate for the PRC rate because companies deemed to be part of the PRC enterprise for which a review was requested have not responded to the Department's antidumping questionnaire.

Where the Department must resort to the facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination of the less than fair value investigation or a previous administrative review, or other information placed on the record. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' See H.Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case the Department has based the margin on information in the petition. See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 24272 (May 14, 1996). In accordance with section 776(c) of the Act, we corroborated the data contained in the petition, as adjusted for initiation purposes, to the extent possible. The petition data on major material inputs are consistent with Indian import statistics, and also with price quotations obtained by the U.S. Embassies in Pakistan and India. Both of these corroborating sources were placed on the record during the investigation and have been added to the record of this review. In addition, we note that the petition used World Bank labor rates which we have repeatedly found to be a probative source of data. Based on our ability to corroborate other elements of the petition calculation, we preliminarily find that the information contained in the petition has probative value.

Accordingly, we have relied upon the information contained in the petition. We have assigned to all exporters other than Yude and Zhenxing a margin of 85.20 percent, the margin in the petition, as adjusted by the Department for initiation purposes.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from Yude Chemical Industry Co. (Yude), Zhenxing Chemical Industry Co. (Zhenxing), PHT International, Inc. (PHT), and from the petitioner, Nation Ford Chemical Company.

Comment 1: Petitioner claims that the use of Indian import prices for aniline as the surrogate value for aniline used by the PRC respondents in this case is inappropriate because the plain language of the statute does not permit the Department to use imported aniline prices when the NME respondents use domestically-sourced aniline. Petitioner contends that the Department incorrectly based the surrogate value for aniline on Indian sulfanilic acid production processes, instead of reported PRC production processes. Petitioner contends that the Department must first identify the NME factors of production and then, using those same factors, obtain surrogate values from a market economy country at a similar level of economic development. Petitioner contends that because respondents use domestically-sourced aniline to manufacture sulfanilic acid, the Department must value aniline using prices for aniline domestically produced in India.

Petitioner also contends that the Department has recently stated a clear preference for using domestic market prices in the surrogate country to value factors of production when such prices are available. As support for this position, Petitioner cites Brake Drums and Brake Rotors from the PRC, 62 FR 9163; Persulfates from the PRC, 61 FR 68,232, 68,235; Sebacic Acid from the PRC, 59 FR 565, 568; and *Tehnoimportexport* v. *United States,* 16 CIT 13, 783 F. Supp. 1401 (1992).

Petitioner also argues that the profitability of surrogate country producers in export markets is irrelevant to the Department's valuation of the factors of production utilized by the NME enterprises under investigation. Thus, they urge the Department to disregard respondents' argument that Indian producers could not make a profit on export sales if they used Indian-produced aniline.

Furthermore, Petitioner contends that the values for imported aniline used in the preliminary results cannot be used because, they claim, these values are based on subsidized prices. According to petitioners, the Department has determined that the Indian Advanced License program is a countervailable subsidy under U.S. law. Sulfanilic Acid From India, 57 FR 35,785 (Aug. 11, 1992); Sulfanilic Acid From India, 58 FR 12,026 (Mar. 2, 1993). Under this program the normal 85% duty on imported aniline is not collected if sulfanilic acid produced with imported aniline is subsequently exported. Petitioner contends that Indian sulfanilic acid producers receive a government subsidy to the extent that they pay duty-free prices for imported aniline.

Petitioner states that the Department is precluded from using imported aniline prices due to the reasons stated above. Therefore, Petitioner contends that the Department should use as surrogate values the domestic market prices for aniline published in the Indian publications Chemical Business and Chemical Weekly. Petitioner states that these are ''contemporaneous, product-specific, tax-exclusive, and non-export prices.'' Petitioner maintains that these publications are reliable sources as evidenced by the Department's use of these sources in several antidumping investigations and reviews involving PRC products, including the Department's valuation of activated carbon in the preliminary results of this case.

Respondent argues that the Department correctly valued aniline using Indian import statistics because Indian sulfanilic acid producers used imported aniline to produce sulfanilic acid for export. Respondents refer to the 1993–94 and 1994–95 administrative reviews of this case in which the Department previously used Indian import statistics in valuing aniline. Respondents also cite the decision of

the Court of Appeals for the Federal Circuit (CAFC) in *Lasko Metal Products, Inc.* v. *United States,* 43 F.3d 1442, 1446 (1994), in which the CAFC stated that in the underlying case the best available information on what the supplies used by the Chinese manufacturers would cost in a market economy country was the price charged for those supplies on the international market. Respondent argues that the value of the aniline used by the Indian producer to make sulfanilic acid for export is the import price for aniline, which reflects the cost of aniline on the international market.

Department Position: We agree with respondent that the Indian import values provide a better approximation than Indian domestic prices of what the inputs used by the Chinese manufacturers would cost were the PRC a market economy country. Evidence on the record of this review indicates that a two-tier pricing system for aniline exists in India as a result of the combination of an 85% tariff on imports of aniline and the effects of the advanced license program, which waives that tariff when imported aniline is used in the production of sulfanilic acid for export. Thus, Commerce had two main options in selecting a surrogate value for aniline: the Indian domestic price paid by Indian producers of sulfanilic acid for the Indian domestic market and the duty-free, Indian import price for aniline paid by Indian producers of sulfanilic acid for the export market. As in prior reviews, Commerce has chosen to use the average Indian import price because it is the value of the aniline used to produce sulfanilic acid for the export market (and the costs constructed using the surrogate methodology are the costs for Chinese production for the export market).

Petitioner's claim that the ''factor of production'' to be valued is ''domestic aniline,'' such that the statute requires that the value of this factor be assigned based on aniline produced domestically in India, has no support in law or fact. There is no indication on the record that the aniline used by the Chinese producers, which their public response indicates is locally sourced rather than imported, is physically or chemically different from the aniline that is produced in India or imported into India, or that the sulfanilic acid ''production process'' is different in either China or India depending upon whether imported or domestically-sourced aniline is used. There is no reason why Commerce must base its valuation on ''domestic'' (Indian-produced) aniline because the PRC factories use ''domestic'' (PRC-produced) aniline. Aniline is a generic, fungible input, not altered by whether it is imported or sourced in the same country in which it is used. The factor to be valued in this case is not ''domestic aniline'' but simply ''aniline.''

Nor is Commerce compelled to use domestic values simply because some domestic market values exist. The Court of International Trade has long recognized that Commerce has often used import statistics (to value both inputs imported into NME countries and imports sourced locally in NME countries) and that import prices into the surrogate country are an acceptable reflection of the value of that input in the surrogate country. See, *e.g., Tehnoimportexport* v. *United States* (1992), 783 F. Supp. 1401, 1405. In this case, the prices for domestically produced aniline on the record of this review are not suitable for use as surrogates for the PRC cost of aniline because these prices are artificially high due to India's 85% import tax.

With respect to the question of whether Indian producers could profitably produce sulfanilic acid for export using Indian-sourced aniline, we note that we have not based our choice of surrogate value for aniline on respondents' suggestion that this would not be possible. No such finding is necessary. The aniline purchase choices of Indian manufacturers of sulfanilic acid (as reflected in the record) are relevant primarily as an indication that the price of aniline when used for production of sulfanilic acid for sale in India is unusually high, and thus, inappropriate for purposes of valuation of PRC export production costs.

Finally, petitioner's argument that the aniline import values are ''subsidized prices'' which therefore cannot be used as surrogate values misses the mark. Assuming, for the purposes of argument, that the Indian Advanced License program identified in 1992 as constituting a subsidy to Indian-produced sulfanilic acid would still be found to be countervailable, this program would constitute a subsidy to Indian-produced sulfanilic acid, not to aniline imported into India from other countries. Thus, Commerce would avoid using, as a surrogate value, the export value of Indian-produced sulfanilic acid, but not of imported aniline. The Indian Import Statistics used by the Department to value aniline are pre-tariff prices, which are unaffected by whether or not subsequently added duties charged to the importer are waived on a given shipment. The sort of subsidy Commerce is concerned with when it uses import prices is a producer-country subsidy that would artificially lower the import price. India has no interest in subsidizing aniline produced in other countries and imported into India. Because any subsidy which may be associated with the importation of aniline under the Advanced License Program for purposes of producing sulfanilic acid for export is a subsidy not to aniline but to sulfanilic acid, it does not provide a reason for rejecting aniline import values for purposes of serving as surrogates for the cost of aniline (not sulfanilic acid) to PRC producers.

Comment 2: Petitioner argues that if the Department uses Indian import statistics to value aniline in the final results, the Department should adjust the import values upward to reflect Indian import duties. Petitioner contends that the Indian Advance License program is similar to duty drawback. In the case of duty drawback the customs duty refunded to the importer would be added to U.S. Price under 19 U.S. C. 1677a(d)(1)(B) if the respondent can show that the importer took advantage of the duty drawback program. Petitioner argues that there is no evidence in this review that any of the Indian producers of sulfanilic acid took advantage of the Advance License program. Petitioners contend that the burden is on the Respondents to show that Indian sulfanilic acid producers either did not pay the import duties or received refunds of import duties payable on imports of aniline upon the exportation of finished sulfanilic acid.

Petitioner also argues that because the Indian Advanced License program has been found to be a countervailable subsidy under U.S. law, the Department should add the import duties to the import values used as the surrogate value of aniline for this reason.

Respondents contend that the Department should follow its precedent in the prior administrative reviews of this case and not add the 85% import duty to the value of aniline taken from the Indian Import Statistics. Respondents argue that the only way that Indian sulfanilic acid factories can produce sulfanilic acid for export is to import aniline duty free under India's import duty exemption scheme. Respondents argue that the Department does not need to verify that every Indian producer and exporter uses the Advance License program and should base its determine on the evidence on the record of this investigation.

Department's Position: We agree with respondents that we should not add to the Indian import values an amount corresponding to the 85% tax levied by the Indian government on imported

aniline which is not subsequently used in the manufacture of another product for export. Because these Indian import duties do not represent costs that a PRC producer would pay if the PRC were a market economy, it is the Department's practice to refrain from including any such duties in an NME surrogate price. See, e.g., Tapered Roller Bearings from the PRC, 62 FR 6173, 6177 (February 11, 1997)(Comment 3); Lockwashers from the PRC, 58 FR 48833, 48843 (September 20, 1993) (Comments 12 and 13).

In this case, there are also two additional reasons for not adding on the amount of the import tax. The 85% tax at issue is not only unique to India; it is also abnormally high for an import tax, and is, furthermore, not even paid by producers of sulfanilic acid for the export market.

Respondents have placed on the record of this review published Indian government materials describing the operation of the Advance License system and its use to avoid payment of duties on aniline used to produce sulfanilic acid for export from India. Respondents have also placed on the record, *inter alia,* a letter from an Indian sulfanilic acid exporter explaining in detail how it imports aniline duty free, works with an Indian sulfanilic acid producer to produce sulfanilic acid from the imported aniline, and then exports the sulfanilic acid without paying duty on the imported aniline, and a letter from an Indian sulfanilic acid producer stating that it uses imported aniline to produce sulfanilic acid. Thus, petitioner's claim that there is no evidence on the record of this review that Indian producers of sulfanilic acid used the Advance License program and thus avoided payment of the 85% duty is without basis.

Also without basis is petitioner's claim that Commerce must add the 85% import tax to the import values absent the same type of evidence required to support a duty drawback adjustment to U.S. price. The PRC respondents in this review are not seeking a duty drawback adjustment to a United States price for sulfanilic acid exports from India (the country granting the duty drawback), and are not privy to the confidential documents of the Indian sulfanilic acid companies involved. What we are attempting to determine here is a surrogate value for Chinese aniline. The question of whether particular Indian exporters of sulfanilic acid imported sufficient aniline to qualify for duty drawback might be relevant if we were determining the U.S. price of Indian sulfanilic acid. However, it is simply immaterial to the question of the value of aniline.

Finally, petitioner has no basis for insisting that the 85% duty be added onto the aniline import value because of an alleged subsidy to the price of imported aniline. As explained above, any subsidy that may exist is a subsidy to Indian-produced sulfanilic acid, not to aniline produced elsewhere and imported into India.

Comment 3: Respondents contend that Indian export prices for activated carbon should be used instead of Indian import statistics because the import prices do not reflect the prices of the liquid phase activated carbon used by the Indian and Chinese sulfanilic acid producers. Respondents state that activated carbon can be classified as gas phase or liquid phase. Respondents argue that gas phase activated carbon is generally higher in price and is used in small quantities, while liquid phase activated carbon is a less expensive industrial grade which is used in larger quantities. Respondents also state that liquid phase activated carbon is generally sold in powder form. Respondents argue that prices for imported activated carbon are aberrational and do not reflect the prices for liquid phase activated carbon, the type used by the Chinese respondents. Respondents cite as precedent the Department's approach in the less than fair value investigation of Polyvinyl Alcohol from the PRC, (''*Polyvinyl Alcohol*''), in which the Department used Indian export, rather than import, values as a surrogate for Chinese activated carbon. Respondents submit that due to the great price disparity between the import and export prices, it is highly unlikely that Indian sulfanilic acid producers would use imported activated carbon to produce sulfanilic acid for export.

Respondents argue that in using import values in its preliminary determination, the Department did not take into consideration the quality of the activated carbon used by the Chinese respondents or the quality of the activated carbon imported into India. Respondents argue that the record of this case contains public price quotes from an Indian activated carbon producer and an Indian chemical export company which support the use of the submitted published export price.

Additionally, respondents argue that the quantities associated with the sales of imported activated carbon used in the preliminary determination demonstrate that the imports are for the gas phase activated carbon, not the industrial liquid phase activated carbon. The quantity of the shipments cited in the Department's Surrogate Value Memorandum of May 5th, 1997 for this review of sulfanilic acid from the PRC, shows that the valuation of activated carbon was based on shipments varying in total weight from 2 to 7.8 metric tons per shipment and were primarily imported by laboratories. In contrast, the record of this review shows that during the POR the respondent companies used 90 to 100 metric tons of activated carbon as compared to the total of 26.9 metric tons used for valuation purposes. Respondents contend that this small quantity associated with the import sales supports their argument that these imports are of the more expensive gas phase type of activated carbon. Additionally, respondents contend that the quantities required by respondents would surely merit quantity discounts, not reflected by the subject prices.

Petitioners did not comment on respondents' arguments with respect to activated carbon.

Department Position: We agree with Respondents that the import prices do not appear to correspond to the type of activated carbon used by Chinese manufacturers. The record of this review contains two sources of publicly available published price data on activated carbon. The published import prices contain information more contemporaneous to the period of review than the submitted published export price. However, neither of these sources state which types of activated carbon are contained in these sales. The Department consulted with a chemical products specialist at the International Trade Commission who confirmed that there is a distinction between liquid and gas phase activated carbon, and that liquid phase activated carbon is generally sold in powdered form. (See Memorandum to the File dated August 21, 1997 from Case Analyst.) The great disparity between the import and export prices suggests that these price quotes may be for different grades of activated carbon. Respondents have additionally provided public price quotes which are specific to the type and grade of activated carbon reported in the Chinese sulfanilic acid producers' factors of production response. These price quotes, which are contemporaneous to the POR, are comparable to the published export price indexed to the POR.

The Department has previously found that Indian export prices for activated carbon are more reliable than import prices in the Polyvinyl Alcohol investigation. This issue was not mentioned in the **Federal Register** notice of the final determination, but the

Department's Polyvinyl Alcohol preliminary determination concurrence memorandum states that ''in the case of activated carbon, we compared the export and import statistics values to other available data and found that the import statistics values varied substantially greater from the other comparison values, as shown in the Attachment 1 chart. By comparison the export value varied by a lesser extent.'' See Polyvinyl Alcohol attachments to the Final Analysis Memorandum for Sulfanilic Acid from the PRC, September 9, 1997. Because the public price quotes submitted by respondents on the record of this sulfanilic acid review are contemporaneous to the POR, are supported by publicly available published information (*i.e.*, the export price), and are specific to the type and grade of activated carbon used by the Chinese producers, we have used the average of these prices as the surrogate value for this factor.

Clerical Errors

Respondents contend that the Department made one clerical error in its preliminary results. They state that, in calculating the surrogate value for activated carbon, the Department used incorrect wholesale price indices (WPI's) when it adjusted the sales prices for April 4, May 2, and May 16, 1995, for inflation. For the final results of review, we used price quotes contemporaneous to the time period. Therefore, the surrogate value for this factor will not be indexed for inflation using the WPI.

Final Results of Review

As a result of our review of the comments received, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Yude Chemical Industry Company	8/1/95–7/31/96	0.00
Zhenxing Chemical Industry Company	8/1/95–7/31/96	0.00
PRC Rate [1]	8/1/95–7/31/96	85.20

[1] This rate will be applied to all firms other than Yude and Zhenxing, including all firms which did not respond to our questionnaire requests.
*Yude and Zhenxing have been collapsed for the purposes of this administrative review. See Preliminary Results of Antidumping Administrative Review of Sulfanilic Acid from the PRC (62 FR 25917) May 12, 1997. However, we have listed them separately on this chart for Customs purposes.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rates for reviewed companies named above which have separate rates will be the rates for those firms listed above; (2) for all other PRC exporters, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews, the PRC-wide rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 9, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24564 Filed 9–15–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 12, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia). This notice of final results covers the review period of August 1, 1995 through July 31, 1996. This review covers one manufacturer, AVISMA Titanium-Magnesium Works (AVISMA), and three trading companies, Interlink Metals & Chemicals, S.A. (Interlink), TMC Trading International, Ltd. (TMC), and Cometals, Inc. (Cometals). We gave interested parties an opportunity to comment on the preliminary results. We received comments from AVISMA, Interlink, TMC, and Titanium Metals Corporation (TIMET), a petitioner. A hearing was held on June 30, 1997 with both public and closed sessions. Based on our analysis of these comments, we have not changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Mark Manning, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone:

(202) 482–3965 and 482–3936 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 353 (1997).

Background

On May 12, 1997, the Department published in the **Federal Register** (62 FR 25920) the preliminary results of the 1995–1996 administrative review of the antidumping finding on titanium sponge from Russia (33 FR 12138, August 28, 1968). This notice of final results covers the review period for August 1, 1995 through July 31, 1996, covering one manufacturer, AVISMA, and three trading companies, Interlink, TMC, and Cometals. The Department has conducted this review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS item number is provided for convenience and Customs' purposes. The written description remains dispositive as to the scope of the product coverage.

The review period (POR) is August 1, 1995 through July 31, 1996, covering one manufacturer, AVISMA, and three trading companies, Interlink, TMC, and Cometals.

Analysis of Comments Received

Comment 1: Application of Facts Available Against TMC

Petitioner argues that TMC has not acted to the best of its ability to comply with the Department's requests for information. Petitioner states, ''from the inception of the administrative review, TMC has orchestrated a prolonged deception in each of its responses, concerning its activities and the existence of affiliated parties.'' In addition, petitioner claims that TMC's submissions are ''only a partial accounting of its history and affiliations.'' Therefore, petitioner argues that the application of adverse facts available to TMC is warranted.

Petitioner argues that TMC is a false front. Petitioner claims that TMC is trying to have the Department believe that AVISMA would abandon experienced trading companies for TMC, which, petitioner claims, does not have experience in or knowledge of the worldwide titanium market. In addition, petitioner argues that TMC is not operated similar to any other company in the titanium sponge industry. For example, petitioner claims that TMC's reported sales and profit are not representative of a normal, arm's-length trading company being supplied by an unaffiliated producer. Petitioner points to the information on the record which demonstrates that TMC's profit is higher than the average commission income received by trading companies in the titanium sponge industry.

To support its argument that TMC is misrepresenting itself, petitioner points out that TMC only began providing more information on its activities, ownership, and affiliation after the deadline for submitting new information had expired. Petitioner asserts that the deadline for the submission for new information was March 16, 1997, in accordance with 19 CFR 353.31(a)(ii). Petitioner argues that the Department should reject TMC's April 3, 1997 submission, which petitioner argues provides new information that was not verified by the Department because it was provided on the last day of verification. Petitioner argues that all changes to submissions should be presented at the beginning of verification, which should have included the information in TMC's April 3, 1997 submission. Petitioner asserts that the information provided in this submission is ''new information and worthless for the purpose of determining affiliation'' and ''not susceptible to verification.'' Petitioner claims that none of these submissions were in response to a Departmental query, but new information submitted on its own. At a minimum, petitioner argues that the Department should return and disregard all of TMC's submissions dated after March 16, 1997. Also included in these untimely submissions, are TMC's audited financial statements, which were submitted on March 28, 1997.

Petitioner states that it believes that AVISMA controls and is affiliated with TMC and that TMC tried to manipulate the review process to prevent the Department from learning of this affiliation in order for AVISMA to indirectly obtain a zero dumping margin. Petitioner claims that the original questionnaire requested that TMC list all affiliated companies and TMC failed to disclose several affiliated parties. Given another opportunity through its supplemental questionnaires, petitioner claims that TMC still failed to fully disclose its affiliated companies, and TMC falsely certified that its responses were complete and accurate. Petitioner characterizes TMC as reluctantly deciding to disclose the true owner(s) of TMC once it realized that the Department would be questioning the distribution of TMC's profits on the last day of verification. Petitioner alleges that TMC's late disclosure of this owner indicates that TMC must believe that this disclosure is detrimental to its position.

Petitioner states that the Department has two choices for adverse facts available. We could either use the ''All Others'' rate of 83.96 percent or calculate a new rate by classifying TMC's dividend/royalty as a direct expense and allocate it only to the merchandise sold to the U.S. during the period of review. Finally, petitioner argues that TMC did not accurately and completely answer the questionnaire in a timely manner to the best of its ability.

Petitioner claims that the Department is unable to make a decision on affiliation due to the incomplete information on the record. Petitioner asserts that, ''the Department cannot simply assume benign neglect on TMC's part or that the omissions led to harmless error. Given the still incomplete record in this case, it is impossible to discern the extent to which TMC has prejudiced the final results. These problems render all of TMC's responses unreliable.'' Petitioner argues that if the Department chooses to use TMC responses, it would set a precedent for future respondents that if they fail to provide timely, complete, and accurate responses, there should be ''no fear of sanction.'' Therefore, petitioner argues that the evidence supports applying adverse facts available because TMC failed to cooperate with the Department and did not act to the best of its ability to comply with the Department's requests for information.

TMC argues that the application of facts available is unwarranted because of TMC's cooperation and timeliness in responding to the Department's requests for information and at verification.

With regard to timeliness, TMC claims that it responded to the

Department's initial and six supplemental questionnaires within the deadlines established by the Department and submitted additional factual information within the 180-day regulatory deadline. In addition, TMC claims that it submitted its audited financial statements as soon as the company's first audit was completed, in advance of verification. TMC points out that the Department's verification report reveals ''no material inaccuracies in the information submitted by TMC, nor does it indicate that there were any items that could not be verified.''

TMC cites CAFC court rulings which rule that facts available may be warranted when a large portion of the questionnaire response is submitted past the Department's deadline or when the respondent did not comply with a Department's request for information. See *Ansaldo Componenti S.p.A.* v. *U.S.*, 628 F.Supp. 198, 205 (CIT 1986); *Olympic Adhesives, Inc.* v. *U.S.*, 708 F.Supp. 344 (CIT 1989), *rev'd*, 899 F.2d 1565 (Fed. Cir. 1990); *Daewoo Elec. Co.* v. *U.S.*, 712 F.Supp. 931, 944 (CIT 1989). TMC states that its actions are consistent with the CAFC court rulings in that facts available are not justified in this case.

TMC also argues that TIMET had several opportunities to comment on any inadequacies found in TMC's supplemental questionnaire responses and in the verification report, but chose not to comment.

TMC asserts that TIMET's argument that the Department should reject TMC's March 5, 1997 and April 3, 1997 submissions because they are untimely is misplaced. First, TMC claims that it submitted the April 3, 1997 by the Department's established deadline and during, not after, verification, stating that verification took place April 3–4, 1997 (noting a typographical error in the verification report). In addition, TMC's March 5, 1997 submission was submitted well within the 180-day deadline established by the Department for supplemental submissions.

TMC also argues that information presented in its April 3, 1997 submission was verified. TMC argues that, at verification, the Department requested information regarding TMC's affiliations, which included the information contained in TMC's April 3, 1997 submission. TMC asserts that the Department is not required to verify every piece of information, as stated in 19 CFR 353.36(c).

TMC argues that petitioner inaccurately characterizes TMC's experience in the titanium sponge industry and AVISMA's rationale for hiring TMC as its distributor for marketing titanium sponge. In addition, TMC argues that petitioner's suggestion that the Department could classify TMC's dividend/royalty as a direct expense as adverse facts available is not consistent with Departmental practice. TMC asserts that, in these instances, the Department's practice is ''to assume related party payments are not at arm's length and, consequently, not adjust for them in its antidumping calculations.'' See *Outokumpu Copper Rolled Products AB* v. *U.S.*, 850 F.Supp. 16, 22 (CIT 1994).

TMC argues that TIMET's arguments about TMC's profits are inappropriate and ''should not be viewed as signifying anything other than a well-run company.'' TMC characterizes TIMET's comparison of TMC's profits to those of a commission agent, who takes no risk, as unrealistic and inappropriate.

Finally, TMC argues that if the Department determines that TMC and AVISMA are affiliated, the final results would not change, citing the Department's discussion of affiliation in the preliminary results. TMC points out that TIMET has not challenged this aspect of the preliminary results.

Department's Position

While we are concerned that TMC did not fully disclose the nature of its relationship to AVISMA in its initial questionnaire responses, we have determined that this deficiency did not materially impair our review in this case. Therefore, we have not used adverse facts available against TMC.

In its response to our first questionnaire, TMC stated that it is a wholly owned subsidiary of TMC (Holdings), Limited, whose share capital is owned by Valmet S.A. The ultimate parent of Valmet S.A. is Valmet Group Limited. Bank Menatep of Russia is a minority shareholder of Valmet Group Limited. We note and are concerned by TMC's failure to initially disclose, in response to our questionnaire, the fact that Bank Menatep has a major presence on AVISMA's board of directors. Such facts clearly are material to our consideration of the nature of any relationship between TMC and AVISMA. Although we did not specifically ask TMC whether any of its parent companies were affiliated with AVISMA, either directly or indirectly through another affiliated company, we did ask questions aimed at obtaining a complete picture of the relationship between TMC and AVISMA. To the extent TMC was aware that Bank Menatep was affiliated with AVISMA and failed to report it, we would view that as impeding this review. On the other hand, the record of this case is not clear on this point. The questions asked did not specifically seek this information; rather, the questions focused on the structure and operations of Valmet Group Ltd., Valmet S.A., and TMC. Moreover, the record of this case indicates that Bank Menatep is a minority non-controlling shareholder of Valmet Group Limited. As such, it is not clear how much TMC knew or should have known about Bank Menatep's various operations. Indeed, Bank Menatep's financial statement, later submitted by TMC, shows it to be a large commercial bank with extensive holdings in numerous entities. Additionally, as discussed below, TMC's substantial cooperation and compliance with our numerous questionnaires indicate that rejecting TMC's response *in toto* is not warranted. Therefore, on balance, we do not believe it reasonable to reject TMC's entire response. We also note that, as stated in the preliminary results, we do not believe it is necessary to address this issue of possible affiliation between TMC and AVISMA for purposes of this review because the determination will not affect our analysis. We must rely on TMC's sales to the United States regardless of a determination on affiliation.

With regard to the timeliness of TMC's questionnaire responses and submissions, we believe that TMC has provided its submissions in a timely manner because its submissions were provided earlier than the 180-day regulatory deadline for the submission of new information, in accordance with 19 CFR 353.31(a)(ii) (i.e., March 17, 1997), and its questionnaire responses were submitted within deadlines established by the Department. The Department's regulations at 19 CFR 353.31(b) state that the Department ''may request any person to submit factual information *at any time* during a proceeding'' (emphasis added). TMC's April 3, 1997 submission was provided on the first day of verification in response to the Department's April 1, 1997 supplemental questionnaire. Therefore, at verification, we accepted the new information provided in TMC's April 3, 1997 submission because it was requested by the Department at a previous date.

In addition, TMC cooperated with the Department's requests for information and at verification. As noted by TMC, the Department's April 16, 1997 verification report does not refer to any lack of cooperation on the part of TMC when questioned on its affiliations.

With regard to whether or not the information in TMC's April 3, 1997 submission was verified, we disagree

with the petitioner. As the verification report indicates, TMC's responses were verified without any major discrepancies. As a normal part of our verification procedures, and in particular because of the question of affiliation in this case, we examined TMC's corporate structure and the nature of any affiliation with other partners in great detail. This exercise necessarily involves asking for and collecting additional support documentation. Given the completeness and success of the verification, and the fact that the collected information did not materially affect our analysis, we chose not to visit another location to further evaluate this matter.

Petitioner's speculations on the existence of an affiliation between AVISMA and TMC are not relevant to this proceeding. The Department issued several supplemental questionnaires on this issue and analyzed each submission with regard to whether further information should be requested. In addition, at verification, we examined documents relevant to the affiliation issue, and noted at the time that ''we found no documentation that would lead us to believe that AVISMA and TMC have other dealings besides what was presented in its response.'' *Id.* at 4. Should this question become relevant in our analysis in future administrative reviews, we may further examine the issue of affiliation between TMC and AVISMA. For purposes of this review, the information on the record indicates that an affiliation determination is not relevant to our determination of the dumping margins for TMC and AVISMA. As stated in our preliminary results, because AVISMA did not export to the United States and did not have knowledge of the ultimate destination of the merchandise sold through TMC, ''all relevant sales to the United States are captured in our analysis without making an affiliation determination.'' See Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge from the Russian Federation, 62 FR 25920, 25921 (May 12, 1997).

Comment 2: Reported Entered Values

Petitioner alleges that Interlink may have used the price that Interlink paid to AVISMA as the entered value of the imported titanium sponge reported to the U.S. Customs Service (Customs). Petitioner states that the reported entered values are not equivalent to the gross sales prices less moving expenses. Petitioner claims that Interlink appears to have undervalued its entries and, therefore, underpaid the dumping cash deposits and Customs duties.

If this is the case, petitioner argues that this price may not be used because the merchandise was not clearly destined for export to the United States (given that AVISMA did not have knowledge of the final destination of the merchandise), as stated in *Nissho Iwai* decision. See *Nissho Iwai American Corp.* v. *U.S.*, 982 F.2d 505,509 (Fed.Cir. 1992). Therefore, petitioner states that AVISMA-Interlink sales may not be used as the basis for entered values.

AVISMA and Interlink argue that this issue was raised in the last administrative review and concerns Interlink and Customs, not the Department or TIMET. AVISMA and Interlink report that Interlink is working with Customs, ''the United States government agency that is, by law, responsible for these matters, to resolve any issues related to the proper valuation of consumption entries.''

Department's Position

We agree with AVISMA and Interlink that any questions concerning the proper valuation of consumption entries is a matter to be resolved by the Customs Service. The Department has conveyed petitioner's allegations to Customs.

Regarding the appropriate basis for export price in this review, our concern is that we have the correct sales price (i.e., the price between the exporter who had knowledge that the shipment was destined to the U.S. and the first unaffiliated U.S. customer). The record of this case indicates that AVISMA did not have prior knowledge that the final destination of the shipment in question was the United States. Because there is no affiliation between Interlink and the U.S. customer, we are satisfied that the reported sales price is the appropriate basis for the export price.

Comment 3: Interlink's U.S. Sales

Petitioner alleges that the Interlink sales used in the calculation of its dumping margin are not bona fide sales for commercial purposes and should be disregarded. Petitioner alleges that Interlink sales which entered the United States under temporary importation bonds (TIBs) are priced lower than the Interlink sales entered for consumption which are used to calculate the dumping margin. In addition, petitioner states that these sales are considerably higher than U.S. and world prices of titanium sponge for the review period. Petitioner states that the Department has disregarded sales when the prices were significantly higher than world market prices and it believed that the respondent had artificially set prices. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 56046 (November 6, 1995); *Chang Tieh Industry Co., Ltd.* v. *U.S.*, 840 F.Supp. 141, 146 (CIT 1993). Insofar as petitioner argues that Interlink's sales used to calculate the dumping margin were not made on commercial terms, it asserts that Interlink's sales should be disregarded and the Department should apply adverse facts available as Interlink's dumping margin.

AVISMA and Interlink disagree with petitioner's characterization of Interlink's sales. AVISMA and Interlink argue that the sales in question were made on different sales terms than sales that entered under TIBs (*i.e.*, Interlink assumed responsibility for all expenses and was the importer of record). AVISMA and Interlink argue that the sales entered under TIBs were sold on an ''in warehouse in Europe'' basis, where the customer took possession in Europe and was responsible for payment for all additional movement expenses, including the movement expenses to the United States.

Department's Position

We disagree with petitioner that there is a basis for disregarding the sales in question. There is no evidence that these sales involve ''artificially set prices.'' Moreover, it is apparent that the higher prices merely reflect the fact that the sales in question were made on different terms of sale. Interlink submitted the sales and entry documentation for the sales in question in response to the Department's February 4, 1997 request. *See* Letter from Wilmer, Cutler & Pickering to Robert S. LaRussa, February 11, 1997. We note that the documentation reports the price charged to Interlink's customer and the sales terms are reported as ''delivered, duty paid.'' In addition, the Customs entry document reports that Interlink paid the 83.96 percent antidumping cash deposit for the sales in question. The customs duty and antidumping cash deposit account for much of the difference between these prices and the ''in warehouse in Europe'' price level. See Analysis Memorandum for the Final Results of 1995/1996 Administrative Review of the Antidumping Finding of Titanium Sponge from the Russian Federation for further discussion of our analysis.

Comment 4: Future Entries of Subject Merchandise

Petitioner argues that the Department should establish a single cash deposit rate for all respondents in this review. Although the Department did not

establish a single rate in the 1994/1995 review, petitioner argues that the circumstances differ in this review because AVISMA changed its selling practices and made sales under this new sales structure, and the record states that TMC became the sole distributor of AVISMA's titanium sponge in November 1995. Petitioner adds that respondents acknowledge that TMC knows the ultimate destination of merchandise it sells through resellers, and, therefore, TMC is the true exporter. Petitioner refers to cases where the Department has applied a ''knowledge test,'' which determines whether the non-NME reseller qualifies as an exporter. See Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, 57 FR 28360, 28427 (June 24, 1992); Final Determination of Sales at Less Than Fair Value; Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 27957, 27959 (May 26, 1995).

In addition, petitioner claims that Interlink will never again be the exporter and the Department will not be able to calculate a separate margin for Interlink, unless Interlink purchases from another entity which does not have knowledge of the ultimate destination. Therefore, petitioner argues that because TMC will be the only exporter for future entries of titanium sponge, the dumping margin found for TMC should be the cash deposit rate for all future entries by any respondent until the next final results of review are published.

AVISMA and Interlink argue that TIMET is incorrect regarding: (1) The meaning of the marketing arrangement between Interlink and TMC; (2) what TMC knew about the destination of the Interlink sales covered by this review; and (3) the future AVISMA/TMC/Interlink marketing arrangements for titanium sponge sales. AVISMA and Interlink argue that TMC had only a general awareness of Interlink's sales plans and did not know the destination of each sale made by Interlink (an arrangement similar to TMC's sales relationship with AVISMA). In addition, AVISMA and Interlink state that, because of the circumstances of the sale, TMC could not and did not know who or in what country the customer was located. Finally, AVISMA and Interlink argue that petitioner is incorrect in asserting that Interlink will never again be an exporter because, as stated in the last review, the relationship between AVISMA and its resellers is continuing to evolve and sales may be based on a different distribution approach in the future.

Department's Position

We disagree with petitioner's assertion that Interlink will never again be an exporter of the subject merchandise and that the application of a single dumping margin for all exporters is appropriate. Speculation on the future relationships between AVISMA and its resellers is not relevant to this administrative review. What is relevant is that during this review, AVISMA was able to sell directly to TMC, Interlink, and Cometals. Due to the proprietary nature of the information on the record, please see the Analysis Memo for a further discussion of the Department's position.

Comment 5: U.S. Credit Expense

Petitioner claims that the Department may have committed a ministerial error by not including credit cost in its margin calculations. Petitioner argues that the Department should make an adjustment for credit based on the terms of sale.

AVISMA and Interlink argue that petitioner is referring to a citation to the Department's regulations which would only apply to reviews based on requests filed with the Department on or after July 1, 1997 (section 351.701; 62 FR 27296, 27416–17 (May 19, 1997)). In addition, AVISMA and Interlink claim that the Departmental practice is to not make circumstance of sale adjustments in cases involving non-market economies. See Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55276 (October 25, 1991); Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833, 48839 (September 20, 1993) (Lock Washers); Final Determination of Sales at Less Than Faire Value: Saccharin from the People's Republic of China, 59 FR 58818, 58823 (November 15, 1994); Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 50–51 (November 6, 1995).

Department's Position

We disagree with petitioner that we should make an adjustment for credit based on the terms of sale. If this proceeding occurred in a market-economy country, we would adjust normal value for the imputed credit calculated on the sales to the United States, in accordance with section 773(a)(6)(C)(iii) of the Act. However, in cases involving non-market economies (NMEs), Departmental practice is to not adjust for differences in the circumstances of sale (COS), such as imputed credit. See *Lock Washers, DOC Position* to *Comment 4* at 48839.

Section 773(a)(6)(C) of the Act states that COS adjustments to normal value are only required upon a sufficient showing that differences in circumstances of sale exist justifying the adjustment. In this case, the only information we have regarding credit costs in the Brazilian home market is the financial statements of the Brazilian producers. These statements do not specify whether Brazilian home market sales include any particular selling expenses. Therefore, we do not have any basis upon which to determine whether adjustment to the surrogate expenses is appropriate. Given the imprecise nature of the information on selling expenses, we have no basis to conclude that such adjustments are warranted in this case. See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, *DOC Position* to *Comment 1*, 61 FR 19026, 19031 (April 30, 1996).

Comment 6: Value of Steel Sheet

AVISMA and Interlink argue that the Department's value for steel sheet is far in excess of the cost that one would expect to pay for this ''relatively minor input,'' and the SITC category used by the Department is incorrect and should not be used in the calculation of normal value. AVISMA and Interlink provided: (1) Information regarding the types of steel covered by the SITC classification used by the Department; (2) alternative HS classifications which AVISMA and Interlink believe are more appropriate; and (3) Brazilian import data for the HS classifications for steel.

AVISMA and Interlink claim that, although the Department used the same SITC category in the prior review, there was apparently an arithmetic error for this input which AVISMA and Interlink did not recognize because the value appeared to be reasonable. In the current review, although now the calculation is arithmetically correct, AVISMA and Interlink claim that the cost for steel sheet far exceeds any reasonable expectation of a cost for a minor input. Therefore, AVISMA and Interlink argue that the Department must reject its value for steel sheet because it clearly overstates the value of steel and does not produce a reasonable result.

AVISMA and Interlink state the SITC classification used by the Department is comprised of two HS categories: 7208.44 and 7208.45. AVISMA and Interlink state that the difference between the two HS categories is the thickness of the

sheet. AVISMA and Interlink argue that the more narrow thickness category is more appropriate because lighter drums are preferred in the titanium sponge industry since they are easier to handle and are less expensive to make and transport. Further, AVISMA and Interlink argue that the U.S. Department of Transportation's Research and Special Programs Administration issued regulations which state that steel drums which contain hazardous wastes must meet a minimum thickness requirement of 0.92 mm and have a nominal thickness of 1.0 mm. AVISMA and Interlink report that the greatest thickness of steel in the regulations is 1.9 mm.

AVISMA and Interlink further argue that the HS classification 7208.45 contains specialty steel sheet, while HS classification 7208.35, the only other HS category of hot-rolled steel sheet with a thickness of less than 3 mm, contains the commodity type hot-rolled steel sheet. Therefore, AVISMA and Interlink believe that the Department should value steel sheet from HS classification 7208.35 or a weighted-average of HS categories 7208.35 and 7208.45.

Department's Position

We disagree with AVISMA and Interlink that the SITC category used to value steel sheet is incorrect, given the evidence on the record. AVISMA did not provide any specifications of the steel sheet used for producing steel drums in any of its questionnaire responses. Because of the absence of this information, the Department determined in the preliminary results that the SITC category for steel sheet used in the previous administrative review would be appropriate to value steel sheet for this instant review. Parties did not file comments on the Department's use of the SITC category for steel sheet in the previous review.

AVISMA's and Interlink's argument that there was an arithmetic error in the previous review should have been raised in the previous review. Because there is no information on the record of this case describing the specifications of the steel sheet used by AVISMA, we are not in the position to make a determination on the thickness of the steel used. Therefore, we determined that the use of the basket SITC category to value steel sheet is appropriate for this review.

Final Results of Review

As a result of the comments received, we did not revise our preliminary results and determined that the following margins exist:

Manufacturer/exporter	Review period	Margin (percent)
Russia-wide rate	8/1/95–7/31/96	83.96
Cometals, Inc	8/1/95–7/31/96	28.31
Interlink Metals & Chemicals	8/1/95–7/31/96	0.00
TMC Trading International	8/1/95–7/31/96	0.00

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The following deposit requirement will be effective for all shipments of titanium sponge from Russia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for merchandise manufactured and exported to the United States directly by AVISMA will be the Russia-wide rate established in these final results of review; (2) the cash deposit rates for merchandise exported to the United States by Interlink, TMC, or Cometals will be those rates established for Interlink, TMC, or Cometals in these final results of review; (3) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review and have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (4) for Russian manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Russia-wide rate; and (5) the cash deposit rate for non-Russian exporters of subject merchandise from Russia that were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Further, because the rates for Interlink and TMC have been determined to be zero, we will instruct Customs to liquidate all exports of the subject merchandise during the POR by Interlink and TMC, without regard to the antidumping duty. As stated in the preliminary results, we found that AVISMA's and Cometals' exports during the POR entered the United States under temporary importation bonds, which are not subject to the antidumping order. The Department will issue appraisement instructions directly to the U.S. Customs Service.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this review of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 9, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24469 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On March 24, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1993 through December 31, 1993 (see Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews (Preliminary Results), 62 FR 13863). We have completed these reviews and determine the net subsidy to be 7.34 percent *ad valorem* for Norsk Hydro Canada, Inc. (NHIC) and all other producers/exporters except Timminco Limited, which has been excluded from these orders. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Sally Hastings. AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4087 or (202) 482–3464, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1997, the Department published in the **Federal Register** (62 FR 13863) the preliminary results of its administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada (62 FR 13863). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the Preliminary Results. On April 23, 1997, case briefs were submitted by NHCI, a producer of subject merchandise which export pure and alloy magnesium to the United States during the review period, and the Government of Québec (GOQ). At the request of respondents, the Department held a public hearing on May 13, 1997.

These reviews cover the period January 1, 1993 through December 31, 1993. The reviews involve one company (NHCI) and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, Financial Assistance Program For Research Formation and for the Improvement of the Recycling Industry, and Transportation Research and Development Assistance Program.

Applicable Statute

The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scopes of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included in the scope of the orders. Pure and alloy magnesium are classifiable under subheadings 8104.11.000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

Based upon the analysis of the questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Exemption From Payment of Water Bills

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments of the interested parties, summarized below, has not led us to change our findings with respect to the countervailability of this program. The net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	1.00

B. Article 7 Grants From the Québec Industrial Development Corporation

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings with respect to the countervailability of this program. The net subsidy for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	6.34

II. Programs Found Not To Be Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Program
- Program for Export Market Development
- Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program

- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Financial Assistance Program for Research Formation and for the Improvement of the Recycling Industry
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the Preliminary Results.

Analysis of Comments

Comment 1: Countervailable Benefit Received From the Exemption From Payment of Water Bills

While agreeing that NHCI's contract with its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), was linked with the credit it received from the GOQ to offset its water bills and reflected a forecasted annual rate of consumption, respondents argue that the GOQ's recalculation of NHCI's water bills reflecting actual consumption is a more accurate measure of the countervailable benefit than is the water bill credit received by NHCI during the review period. Respondents state that a different billing arrangement would have been made if a water credit had not been received. In summary, respondents argue that the Department should look to what NHCI would have paid absent the water credit and the contract compared to what NHCI paid with the credit and the contract to determine the amount of the benefit conferred by the credit.

DOC Position: We disagree with respondents that we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into to measure the benefit conferred by the credit. Simply put, the GOQ gave NHCI a credit based on and because of the contract and NHCI's forecasted usage. The water contract and the credit are inextricably linked. Again, we compare NHCI's argument to a situation in which a company that received a low-interest loan from a government argues to the Department that because of the low interest rate, it borrowed a greater amount of money than it otherwise would have. Therefore, the company would contend, to calculate the benefit conferred by the low-interest loan, the Department should compare the actual amount of interest paid on the low-interest loan with the amount of interest the company would have paid on a smaller loan at a higher benchmark interest rate. In this loan situation, we would not enter into a hypothetical calculation of what amount the company would have borrowed absent the low-interest loan. Instead, consistent with section 771(5)(A)(II)(c) of the Act, we would simply countervail the difference between the two interest rates regardless of the effect the interest rate has on the other terms of the loan, i.e., the amount borrowed.

In these reviews, the terms of the contract between NHCI and the Industrial Park unambiguously state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent the GOQ's provision of the credit relieved NHCI from paying its water bills, a countervailable benefit existed regardless of any hypothetical alternative arrangements. Therefore, as stated in the Preliminary Results we determine that the countervailable benefit is the full amount of the credit.

Comment 2: Article 7 Assistance under the SDI Act: Respondents argue that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to respondents, the Department should calculate the benefit using its loan methodology and reduce the interest rate charged by the amount of the interest rebated because NHCI knew it would receive interest rebates from SDI prior to taking out loans. Respondents state that this would be consistent with the Department's methodology, and cite a number of cases in support thereof (e.g., Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom (UK Steel), 58 FR 37393, 37397 (July 9, 1993)).

Respondents further contend that the Preliminary Results were based on significant errors of fact regarding the interest rebates received by NHCI. First, the interest rebates received by NHCI reduced NHCI's costs of borrowing for the construction of its plant, not its costs of purchasing environmental equipment. Second, respondents argue that the relationship between the interest rebates and the underlying loans was not indirect.

With respect to the first point, respondents argue that since the Department wrongly assumed that the Article 7 assistance was provided solely for the purchase of environmental equipment, the Department was able to conclude that the interest rebates exceeded the interest that would be expended in connection with the purchase of the environmental equipment. Hence, the Department concluded that the Article 7 assistance should not be treated as an interest rebate. However, because the Article 7 assistance was intended to reduce the cost of financing for the project as a whole, the assistance was not excessive in the sense described by the Department.

With respect to the second point, respondents argue that the Department was incorrect in its assertion that the Article 7 assistance was more closely linked to the acquisition of certain assets than the accumulation of interest costs. Moreover, respondents maintain that the SDI assistance was not intended solely for the purchase of environmental protection equipment, but was also intended to facilitate the construction of NHCI's facility in Québec. The fact that the Article 7 assistance was intended to achieve more than one objective does not distinguish the Article 7 assistance from other interest rebate programs which the Department has treated under its loan methodology, according to respondents.

DOC Position: The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as a interest rebate, then under the methodology adopted by the Department in 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology (Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, (Belgium Steel) 58 FR 37273, 37276, July 9, 1993). However, if treated as a grant, the benefits would be allocated over a period of corresponding to the life of the company's assets.

In their brief, respondents argue that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, respondents conclude the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate (*See, e.g.*, Belgium Steel). The possible choices were between the grant and loan methodologies. Where the company had

knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel cases was never intended to dictate that the Department should apply the loan methodology in every situation in which a government makes contributions towards a company's interest obligations. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government sold a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, *i.e.*, partial interest rebates paid over a period of years on particular long-term loans.

In these reviews, as in the 1993 steel cases, the Department is seeking the most appropriate methodology for the assistance. We erred in our Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada, 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, *inter alia*, on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of the Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the *General Issues Appendix* (GIA) appended to Final Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37082, at 37226, (July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Re-Examination of Specificity of the Article 7 Assistance: In the event the Department continues to treat the Article 7 assistance as a non-recurring grant, respondents state that the Department is obliged to make a finding that the Article 7 assistance conferred a subsidy to NHCI during the POR. The Department may not, as it has here, rely on a factual finding of disproportionality during a different time period and different amounts of assistance. Respondents state that a finding of *de facto* specificity requires a case-by-case analysis, citing *PPG Industries, Inc.* v. *United States* (928 F.2d 1568, 1577 (Fed.Cir. 1991)), *Geneva Steel* v. *United States* (914 F.Supp. 563, 598 (CIT 1996)), and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil (58 FR 37295, 37303 (July 9, 1993)) to support their reasoning. Respondents also cite the sixth administrative review of Live Swine from Canada: Final Results of Countervailing Duty Administrative Review (Live Swine) (59 FR 12243 (March 16, 1994)) as an example where the Department reexamined the countervailability of benefits found to be *de facto* specific in prior reviews.

Respondents maintain that the Department is obliged to evaluate the countervailability of a program previously determined to be *de facto* specific, regardless of whether the parties have provided new information. According to the GOQ, assistance under Article 9 should be included in the Article 7 specificity analysis because Article 9 was the predecessor of Article 7 and the provisions of Article 9 functioned basically the same as those of Article 7.

Respondents then present a methodology they believe should be employed whereby the Department would compare the portion of NHCI's original grant allocated to the POR, based on the Department's standard allocation methodology, and the portions of benefits allocated to the POR for all assistance bestowed to all other enterprises receiving SDI assistance under Articles 7 and 9 to determine whether NHCI received a disproportionate share of benefits.

DOC Position: It is the Department's policy not to revisit specificity determinations absent the presentation of new facts or evidence (see *e.g.*, Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty

Order, 59 FR 58814, November 15, 1994). In these reviews, no new facts or evidence have been presented which would lead us to question our previous determination.

Respondents refer to the various reviews of the countervailing duty order on live swine from Canada as demonstrating that the Department has, as a matter of course, revisited its *de facto* specificity determinations from one segment of a proceeding to another. While distinct *de facto* specificity determinations were made with respect to the Tripartite program in the fourth, fifth and sixth reviews of the order on live swine from Canada, these were not done as a matter of course. The Department reexamined specificity in these reviews of live swine only as a result of an adverse decision by the Binational Panel. Because the Binational Panel overturned the Department's finding of specificity regarding the Tripartite program in the fourth review of live swine for lack of evidence (and eventually rejected its analysis regarding specificity in the fifth review but upheld its decision), the Department continued to collect information in the sixth review, which was running concurrently with the Binational proceedings. In explaining its actions in the sixth review, the Department recognized that it does not routinely revisit specificity determinations, as respondents would have us believe, in stating the following:

> Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada.

(See Live Swine (59 FR 12243 (March 16, 1994)).) As can be seen from the foregoing, the facts surrounding the live swine reviews do not correspond to the situation presented here. In particular, the issue of specificity had not been conclusively settled in the live swine reviews and was in the process of litigation, and different information was available; unlike this case in which a definitive specificity determination had already been established.

As for respondents' arguments that *de facto* specificity determinations should be done on a case-by-case basis, we agree. However, once again we state that we disagree with respondents as to what ''case-by-case'' means. In each of the citations respondents refer to, ''case'' referred not to a separate segment of the same proceeding (*e.g.*, the first review of an order distinct from the second review), but to a separate proceeding involving different products (*e.g.*, carbon black from Mexico as opposed to steel products from Brazil). It is this latter definition of ''case'' we find to be the proper basis for examination of *de facto* specificity determinations. Since a separate *de facto* specificity determination was made in the investigations of pure and alloy magnesium, we find that the analysis was properly conducted.

In proposing that the Department base a POR-specific *de facto* specificity finding on the portions of non-recurring grants allocated to the POR, the respondents appear to be confusing the initial specificity determination based on the action of the granting authority at the time of bestowal with the allocation of the benefit over time. Again, we state that these are two separate processes. The portions of grants allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal.

In addition, we find that the GOQ has not provided new information which would cause us to revisit our original specificity determination. As a result, the bases of the original specificity determination and the conclusions of that determination are still valid. We, therefore, maintain that assistance provided to NHCI under Article 7 of the SDI Act is specific and, therefore, countervailable.

Comment 4: FOB Adjustment: Respondents argue that the Department used the correct sales denominator in the Preliminary Results, but in the alternative has submitted NHCI's F.O.B. (port) value of total sales during the POR.

DOC Position: We have used NHCI's submission of its F.O.B. (port) value of total sales in these reviews in determining the *ad valorem* subsidy rate. In the Preliminary Results, we used NHCI's total sales figure as recorded in the company's books. Due to this change, the rates calculated in these final results differ from those in the Preliminary Results.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the net subsidy for NHCI to be 7.34 percent *ad valorem*.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate (percent)
NHCI and all others, except for Timminco Ltd	7.34

Prior to these 1993 results, the final results of the 3rd (1994) administrative reviews were published (see 12994 Final Results). The 1994 reviews were conducted under the statutory provisions subject to the URAA amendments. These statutory provisions replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. As a result, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Therefore, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company (*See* Federal-Mogul Corporation and the Torrington Company v. United States, 822 F. Supp. 782 (CIT 1993) and Floral Trade Council v. United States, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)).) Accordingly, the cash deposit rate that will be applied to companies not reviewed during the 1994 reviews is that established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments, *i.e.*, these 1993 administrative reviews. (See Pure and Alloy Magnesium from Canada: Final Results of the First (1992) Countervailing Duty Administrative Reviews (62 FR 13857 (March 24, 1997).) Since NHCI was reviewed in the 1994 reviews, we will instruct Customs to collect cash deposits for NHCI at the company-specific rate established for it in the 1994 reviews of 4.48 percent *ad valorem;* for non-reviewed companies, the cash deposit will be the rate calculated in these 1993 reviews of 7.34 percent *ad valorem*, except from Timminco Limited (which was excluded from the order in the original investigations). In addition, for the period January 1, 1993 through December 31, 1993, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative

protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–24565 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090597D]

Marine Mammals

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Whale Conservation Institute, 191 Weston Road, Lincoln, Massachusetts 01773, has requested an amendment to Permit No. 1004.

DATES: Written comments must be received on or before October 16, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9250).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U..S.C. 1531 et seq.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 1004 authorizes the importation of biopsy tissue samples taken from several species of cetaceans in South America, through June 30, 1998. The Holder is now requesting that: 1) the expiration date of the permit be extended from June 30, 1998 to November 30, 1998; 2) the number of imported southern right whale (*Eubalaena australis*) tissue samples taken at Peninsula Valdez, Argentina be increased from 20 to 340; and 3) these ''tissues samples'' taken from southern right whales include baleen, blood and bone, skin/blubber and organ tissues (from dead/stranded whales), and sloughed skin (from live free-ranging whales). Amendment of the permit to allow for this adjustment is considered administrative in nature and is therefore planned to take place upon close of the public comment period.

Dated: September 8, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24520 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090997D]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 875–1401.

SUMMARY: Notice is hereby given that Dr. Christopher W. Clark, Laboratory of Ornithology, Cornell University, Ithaca, New York 14850, has been issued a permit to ''take'' blue whales (*Balaenoptera musculus*) and fin whales (*B. physalus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: On July 17, 1997, notice was published in the **Federal Register** (62 FR 10259) that the above-named applicant had submitted a request for a scientific research permit to ''take'' (i.e., harass) blue whales (Balaenoptera musculus) and fin whales (B. physalus) in order to study the effects on these species of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system. The research will be conducted in the Southern California Bight during September/October of 1997 and/or 1998. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216); the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222); and the Fur Seal Act of 1966 (16 U.S.C. 1151–1175). Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 10, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24521 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 USC, 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of these members to the NOAA PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Monica M.P. Matthews, Senior Executive Service Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0534 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Rance A. Belapoldi: Chief, Surface and Microanalysis Science Division, Chemical Science and Technology Laboratory (National Institute of Standards and Technology)

James Belville: Director, NEXRAD Operational Support Facility, National Weather Service

Jeffrey R. Benoit: Director, Office of Ocean and Coastal Resource Management, National Ocean Service

Margaret A. Davidson: Director, NOAA Coastal Services Center, National Ocean Service

David L. Evans: Deputy Assistant Administrator, National Marine Fisheries Service

John T. Forsing: Director, Eastern Region, National Weather Service

Susan B. Fruchter: Counselor to the Under Secretary, Office of Policy and Strategic Planning

Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of the General Counsel

Jay S. Johnson: Deputy General Counsel for Fisheries, Enforcement and Regions, Office of the General Counsel

David M. Kennedy: Chief, Hazardous Materials Response and Assessment Division, National Ocean Service

Gerald R. Lucas: Director, Eastern Center, Office of Finance and Administration

Gary C. Matlock: Program Management Officer, National Marine Fisheries Service

P. Krishna Rao: Senior Scientist for Environmental Satellite, Data and Information Service, National Environmental Satellite, Data and Information Service

James L. Rasmussen: Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research

Michael P. Sissenwine: Science and Research Director, Northeast Region, National Marine Fisheries Service

Alan R. Thomas: Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research

Louis W. Uccellini: Director, Office of Meteorology, National Weather Service

James K. White: Executive Director for the Economics and Statistics Administration (Economics and Statistics Administration)

Gregory W. Withee: Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service

Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service

Sally J. Yozell: Deputy Assistant Secretary, Office of the Assistant Secretary

Dated: September 19, 1997.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 97–24476 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–12–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

September 10, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased for swing, carryover and carryforward. The limits for the Fabric Group and the sublimit for Category 227 are being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68242, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 17, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	97,305,756 square meters.
Sublevel within Fabric Group 227	22,175,665 square meters.
Level not in a group 338/339	3,052,092 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–24527 Filed 9–15–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Strategic Plan

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comments.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Government Performance and Results Act, has developed a draft Strategic Plan which was submitted to the Office of Management and Budget on August 15, 1997. The Commission is now soliciting comments on the draft plan.

DATES: Comments must be received on or before October 16, 1997.

ADDRESS: Comments on the strategic plan may be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 518–5528 or by electronic mail to secretary@cftc.gov. Reference should be made to ''Strategic Plan.''

FOR FURTHER INFORMATION CONTACT: Madge A. Bolinger, Office of Financial Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 (202) 418–5180.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act, 5 U.S.C. 306 (''GPRA''), requires all agencies to develop and submit strategic plans to the Congress and the Office of Management and Budget no later than September 30, 1997. The Commission has developed its plan, ''Vision and Strategies for the Future: Facing the Challenges of 1997 through 2002,'' which establishes the goals, outcome objectives and strategies for the next five years. Public comment is now being sought on the strategic plan.

The Commission's draft Strategic Plan is set forth below.

Issued in Washington, DC, on September 8, 1997, by the Commission.

Jean A. Webb,

Secretary to the Commission.

Vision and Strategies for the Future: Facing the Challenges of 1997 Through 2002

Commodity Futures Trading Commission Strategic Plan 1997–2002

August 1997

Draft

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Vision Statement

For the years 1997 through 2002, the Commodity Futures Trading Commission will:

Preserve and promote the vital role America's commodity markets play in establishing fair prices for goods and services and managing the risks of their production, marketing, and distribution in the world economy.

Mission Statement

The mission of the Commodity Futures Trading Commission (CFTC) is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity futures and options, and to foster open, competitive, and financially sound commodity futures and option markets.

Background

The Commodity Futures Trading Commission was created by Congress in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The agency's mandate was renewed and expanded in 1978, 1982, 1986, 1992, and 1995.

Today, the CFTC is responsible for ensuring the economic utility of futures markets by encouraging their competitiveness and efficiency, ensuring their integrity, and protecting market participants against manipulation, abusive trade practices, and fraud. Through effective oversight regulation, the CFTC enables the commodity futures markets better to serve their important function in the nation's economy of providing a mechanism for price discovery and a means of offsetting price risk.

Futures contracts for agricultural commodities have been traded in the U.S. for 150 years and have been under federal regulation since the 1920s. In recent years, futures trading has expanded rapidly into many new markets, beyond the domain of

traditional physical and agricultural commodities. Futures and option contracts are now offered in a vast array of financial instruments, including foreign currencies, U.S. and foreign government securities, and U.S. and foreign stock indices.

Economic Benefits of Futures Trading

Why Were Futures Markets Created?

The frantic shouting and signaling of bids and offers on the trading floor of a futures exchange undeniably convey an impression of chaos. The reality, however, is that chaos is what futures markets replaced. Prior to the establishment of central grain markets in the mid-nineteenth century, the nation's farmers carted their newly harvested crops over plank roads to major population and transportation centers each fall in search of buyers. The seasonal glut drove prices to give-away levels and, indeed, to throw-away levels as grain often rotted in the streets or was dumped in rivers and lakes for lack of storage. Come spring, shortages frequently developed and foods made from corn and wheat became barely affordable luxuries. Through the year, it was each buyer and seller for him- or herself, with neither a place nor a mechanism for organized, competitive bidding. The first central markets were formed to meet that need. Eventually, contracts were entered into for forward as well as for spot (immediate) delivery. So-called forwards were the forerunners of present day futures contracts.

Spurred by the need to manage price and interest rate risks that exist in virtually every type of modern business, today's futures markets have also become major financial markets. Participants include mortgage bankers as well as farmers, bond dealers as well as grain merchants, and multinational corporations as well as food processors, lending institutions, and individual speculators.

Futures prices arrived at through competitive bidding are immediately and continuously relayed around the world by wire and satellite. A farmer in Nebraska, a merchant in Amsterdam, an importer in Tokyo, and a speculator in Ohio have simultaneous access to the latest market-derived price quotations. And, should they choose, they can establish a price level for future delivery—or for speculative purposes—simply by having their broker buy or sell the appropriate contracts. Images created by the fast-paced activity of the trading floor notwithstanding, regulated futures markets are a keystone of one of the world's most orderly, envied, and intensely competitive marketing systems.

Indeed, it is an example of a classical free market with many buyers and sellers, no one of whom has dominant market power, achieving an equilibrium price level through open exchange of supply and demand information.

Economic Benefits

In a competitive market economy, there is general agreement among economists that a market for a product would be perfectly competitive if:

- many buyers and sellers met openly, and no one individually controlled the market;
- the commodity was standardized so all knew the grade and quality of the product being traded; and
- buyers and sellers could enter the market freely, and participants had full knowledge of available supply and demand for their product.

While no market meets that ideal, futures markets come closer to it than most others and yield significant economic benefits:

- Price Discovery. With many potential buyers and sellers competing freely, futures trading is a very efficient means of determining the price level for a commodity. This is commonly referred to as price discovery.
- Hedging Risk. Futures markets give producers, processors, and users of commodities and financial instruments a means of passing the price risks inherent in their businesses to traders who are willing to assume those risks. In other words, commercial users of the markets can hedge—enter into an equal and opposite transaction to their cash market position in order to reduce the risk of financial loss due to a change in price—and, through hedging, lower their costs of doing business. This results in a more efficient marketing system and, ultimately, lower costs for consumers.
- Market Information. Since futures markets are national and worldwide in scope, they act as a focal point for the collection and dissemination of statistics and vital market information.

Profile of Market Users

Hedgers

The details of hedging can be somewhat complex, but the principle is simple. Hedgers are individuals and firms which make purchases and sales in the futures market solely for the purpose of establishing a known price level for something they later intend to buy or sell in the cash market (such as at a grain elevator or in the bond market). In this way, they attempt to protect themselves against the risk of an unfavorable price change in the interim. Or hedgers may use futures to lock in an acceptable differential between their purchase cost and their selling price.

The number and variety of hedging possibilities are extensive. A cattle feeder can hedge against a decline in livestock prices, and a meat packer or supermarket chain can hedge against an increase in livestock prices. Borrowers can hedge against higher interest rates, and lenders against lower interest rates. Investors can hedge against an overall decline in stock prices, and those who anticipate having money to invest can hedge against an increase in the overall level of stock prices.

Whatever their hedging strategy, a common denominator is that hedgers willingly give up the opportunity to benefit from favorable price changes in order to achieve protection against unfavorable price changes. In essence, they acquire a form of price insurance.

Speculators

If you were to speculate in futures contracts, the person taking the opposite side of your trade on any given occasion could be a hedger or another speculator-someone whose opinion about the probable direction of prices differs from your own.

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. In so doing, they help provide the risk capital needed to facilitate hedging.

Someone who expects a futures price to increase would purchase futures contracts in the hope of later being able to sell them at a higher price. This is known as ''going long.'' Conversely, someone who expects a futures price to decline would sell futures contracts in the hope of later being able to buy back identical and offsetting contracts at a lower price. The practice of selling futures contracts in anticipation of lower prices is known as ''going short.''

One of the attractive features of futures trading is that it is equally easy to profit from declining prices (by selling) as it is to profit from rising prices (by buying).

Floor Traders

Floor traders, or locals, who buy and sell for their own accounts on the trading floors of the exchanges, play an important role as futures market participants. Like specialists and market makers at securities exchanges, they help to provide market liquidity. If there is not a hedger or speculator who is immediately willing to take the other side of an order at or near the going price, there may be a floor trader who

will do so, in the hope of being able to make an offsetting trade at a small profit minutes or even seconds later. In the grain markets, for example, there is frequently only one-fourth of a cent per bushel difference between the prices at which a floor trader buys and sells.

Floor traders create more liquid and competitive markets. However, it should be noted that unlike market makers or specialists, floor traders are not obligated to maintain a liquid market or to take the opposite side of customer orders.

Current Perspective on the Industry

U.S. Commodity Exchanges

There are 11 commodity exchanges in the United States, located in six cities. These self-regulatory organizations are responsible, subject to CFTC oversight, for the operation of the exchange and the business conduct and financial responsibility of their member firms.

History

As the economy of the United States expanded during the early part of the nineteenth century, the commodity exchanges evolved from unorganized club-like associations into formalized exchanges. In 1848, the first formal exchange, the Chicago Board of Trade, was established with 82 members. And on March 13, 1851, the first contract was traded on this exchange, encouraged by the trading standards, inspections system, and weighing system prescribed by the board members.

Trading on the Chicago Board of Trade was considerable, and by 1870 futures trading also began on the New York Produce Exchange and the New York Cotton Exchange. By 1885, the New York Coffee Exchange was actively trading futures contracts. Since the second half of the nineteenth century, the growth of these exchange institutions has been steady and continuous-evolving into the 11 U.S. commodity exchanges, designated as contract markets by the CFTC, that are used today.

The total volume of futures contract and option trading on all exchanges in the United States now has a notional value of billions of dollars per day. The commodity exchanges have become an indispensable financial tool for the world's markets.

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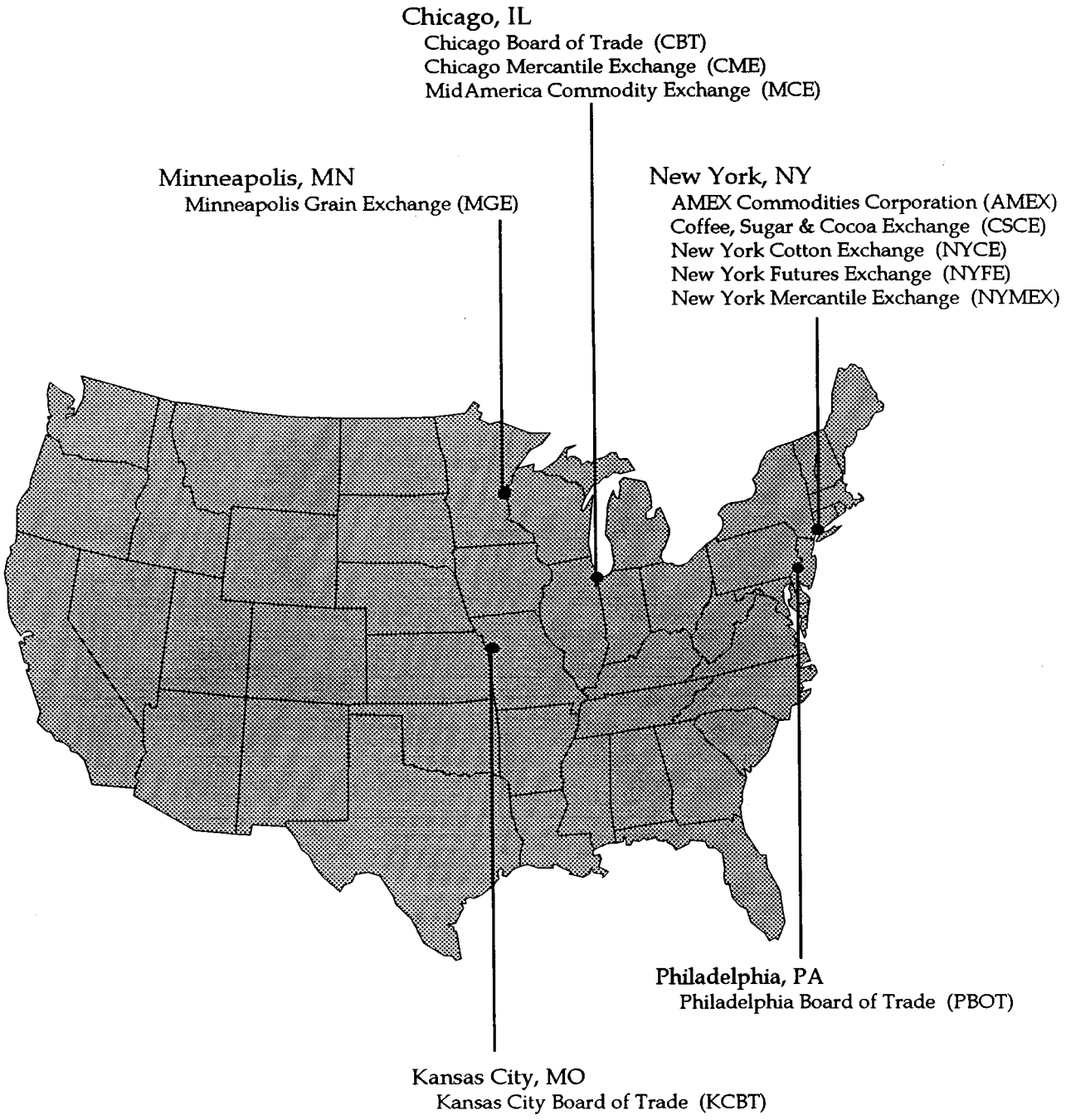
Map of CFTC-Regulated Commodity Exchanges



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Number of Registered Commodities Professionals

Companies and individuals who handle customer funds or give trading advice must apply for registration through the National Futures Association (NFA), a Congressionally authorized self-regulatory organization subject to CFTC oversight.

The Commission regulates the activities of over 62,000 registrants:

Type of registered professional	Number in 1997
Associated Persons (Sales People)	45,850
Commodity Pool Operators (CPOs)	1,351
Commodity Trading Advisors (CTAs)	2,606
Floor Brokers (FBs)	9,299
Floor Traders (FTs)	1,331
Futures Commission Merchants (FCMs)	233
Introducing Brokers (IBs)	1,538
Total	62,208

Number of Contract Markets

Before an exchange may offer a contract for trading, the Commission must review the terms and conditions of the proposed contract, as well as subsequent rule amendments to the terms and conditions of the contract, to ensure its economic viability. Improperly designed contracts can increase the chance of cash, futures, or option market disruptions and undermine the usefulness and efficiency of a market.

During fiscal 1996, the Commission designated 92 new futures and option contracts, the highest number of new contracts in any single fiscal year.

The Commission has seen the introduction of new and novel trading instruments to handle a variety of financial risks, such as currencies, inflation-indexed debt instruments, contracts based on various domestic and foreign stock indices, as well as the risks inherent in the agricultural sector of the economy. It is expected that this innovation will continue as firms, companies, producers, processors, and others turn to the commodity futures markets for hedge protection against financial risk.

There are currently over 230 separate actively traded contracts on the United States exchanges. This number has grown by 105% over the number of contracts traded just a decade ago and is expected to reach nearly 280 contracts by the year 1999.

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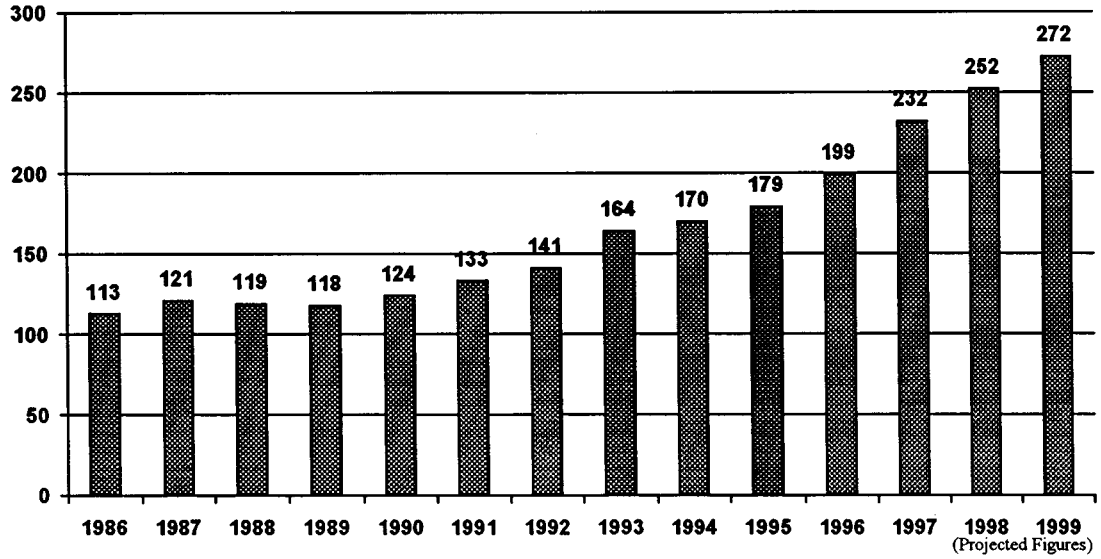
Actively Traded Contracts



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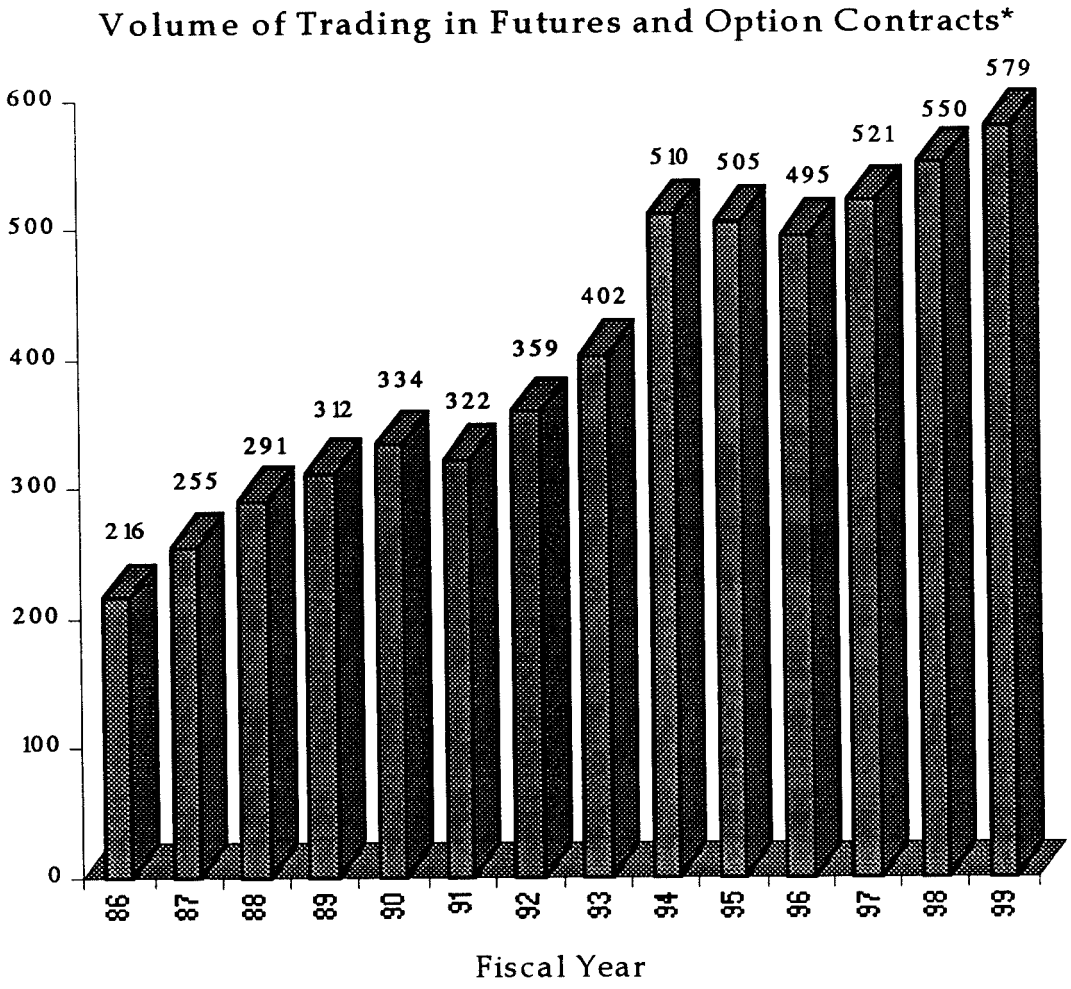
Volume of Trading

Volume of trading is measured in number of contracts traded. The volume of trading on the U.S. exchanges has risen nearly 130% in the decade since 1986.

During FY 1996, there were 494,502,868 futures and option contracts traded. Volume is expected to rise to over 579 million contracts in FY 1999.



*Projected volume in FY 1997 through FY 1999.

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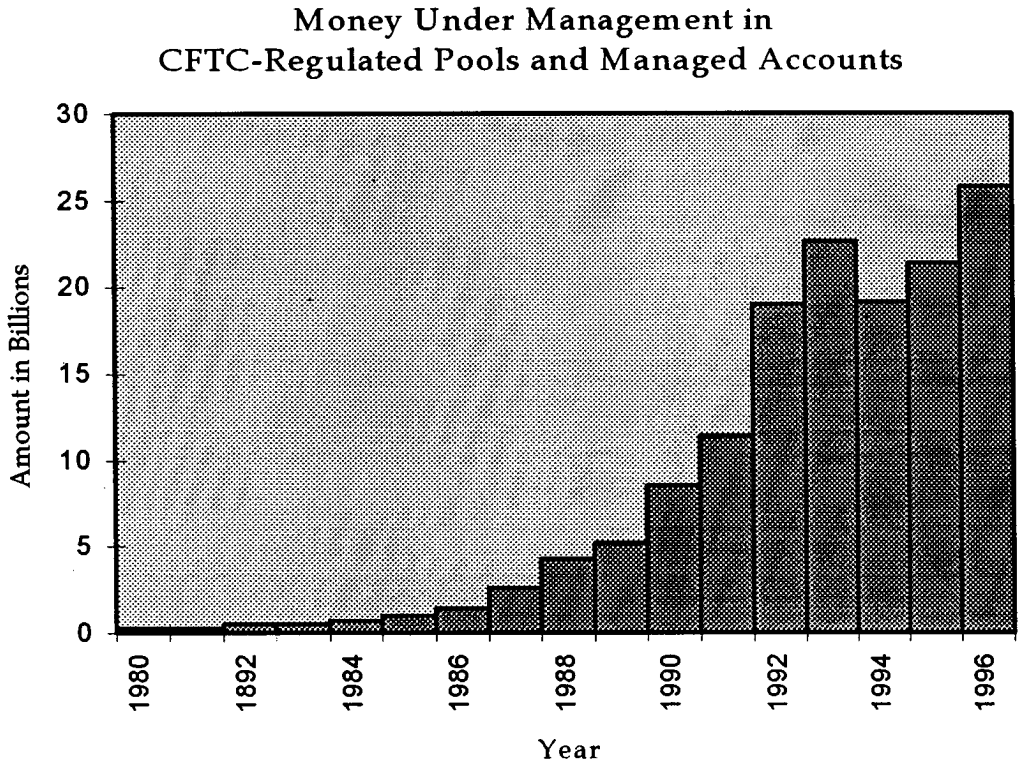
Managed Funds

Investment management professionals have been using managed futures for more than 20 years. Recently, there has been a surge in pooled and managed money and an increasingly large segment of the population has money invested in the futures markets, either directly or indirectly, through pension funds or ownership of shares in publicly held companies that participate in the markets. Institutional investors such as corporate and public pension funds, insurance companies, and banks are increasingly using managed futures to diversify their portfolios.

Over the last decade, from 1986 through 1996, the amounts of money under management has grown exponentially from less than $2 billion to nearly $26 billion.



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Over the past 15 years, the profile of the typical commodity pool has changed significantly. Fifteen years ago, commodity pools were offered with the expectation that maximum contributions would be $1 million. Most pools were single-advisor pools, with the CPO acting as CTA for the pool. Pools were designed for speculative trading, and there were no ''principal-protected'' pools, tiered pools, or dynamically managed pools.

Today, the pool universe is comprised of:

- Single and multiple advisor pools;
- Multi-media pools-that is, pools that invest in securities and futures as well as other investments, including ''hot issues'' of U.S. securities, off-exchange instruments, and international markets;
- Pools which use leverage and isolate particular forms of return, such as the mortgage pre-payment option;
- Principal-protected pools; and
- Pools which invest in other pools.

Strategic Goals and Objectives

The mission of the Commodity Futures Trading Commission is accomplished through three strategic goals, each focusing on a vital area of regulatory responsibility. The goals are highlighted here, and defined in terms of outcome objectives and related activities on the charts which follow.

Goal One—The Marketplace

Protect the economic functions of the commodity futures and option markets.

The focus of this goal is the marketplace. If the United States commodity futures markets are protected from and free of abusive practices and influences, they will better operate to fulfill their vital role in our market economy and the global economy-accurately reflecting the forces of supply and demand and serving market users by fulfilling an economic need.

Goal Two—The Market Users

Protect market users and the public.

The focus of the second goal is protection of the firms and individuals—market users—who come to the marketplace to fulfill their business and trading needs. Market users must be protected from possible wrongdoing on the part of the firms and commodity professionals with whom they deal to access the marketplace, and they must be assured that the marketplace is free of fraud, manipulation, and abusive trading practices.

Goal Three—The Environment

Foster open, competitive, and financially sound markets.

The third goal focuses on several important outcomes—effective industry self-regulation, firms and financial intermediaries with sound business, financial, and sales practices, and responsive and flexible regulatory oversight.

SUMMARIES OF OUTCOME OBJECTIVES AND ACTIVITIES—GOAL #1

Goal #1: Protect the economic junctions of the commodity futures and option markets.]

Outcome objective	Activity
Foster futures and option markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity.	1. Collect and analyze daily U.S. futures and options data for all actively trading contracts to detect congestion and/or price distortion and respond quickly to potentially disruptive situations.

SUMMARIES OF OUTCOME OBJECTIVES AND ACTIVITIES—GOAL #1—Continued

Goal #1: Protect the economic junctions of the commodity futures and option markets.]

Outcome objective	Activity
	2. Monitor the markets to determine how conditions and factors observed may impact individual registrants or the markets in general (e.g., price volatility, supply conditions, activities of affiliated companies of registrants, over-the-counter derivatives trading, manipulative or fraudulent practices, etc.), to deter potentially negative situations and to take appropriate action. 3. Conduct timely review of contract market designation applications and changes to applications to determine if they are economically viable and do not pose a likelihood of disruption in the cash, futures, and option markets. 4. Conduct weekly market surveillance meetings of the Commission to analyze market information, to discuss potentially disruptive situations and conditions, and to respond quickly to market crises. 5. Respond to market emergencies and disruptive activities swiftly and effectively. 6. Maintain a current understanding of market functions and developments through research. 7. Identify possible manipulation and other abusive trading practices for investigation and possible enforcement or criminal action. 8. Investigate possible manipulation and other abusive trading practices. 9. Institute enforcement cases concerning manipulation and other abusive trading practices. 10. Sanction violators.
2. Oversee markets which can be used effectively by producers, processors, financial institutions, and other firms for the purposes of price discovery and risk shifting.	1. Conduct timely review of contract market designation applications, and changes to applications, to determine if they are economically viable and do not increase the likelihood of disruption in the cash, futures, and option markets. 2. Participate in the President's Working Group on Financial Markets to ensure coordination of information and efforts among U.S. financial regulators. 3. Maintain a current understanding of market functions and developments through research. 4. Provide materials and information on the functions and utility of the markets to the public through public Commission meetings, through public roundtables, advisory committee meetings, symposia, U.S. Department of Agriculture publications, press releases, advisories, etc.

SUMMARIES OF OUTCOME OBJECTIVES AND ACTIVITIES—GOAL #2

[Goal #2: Protect market users and the public.]

Outcome objective	Activity
Promote compliance with and deter violations of federal commodities laws.	1. Identify and investigate possible fraudulent and other illegal activities relating to the commodity futures and option markets and their registrants. 2. Bring injunctive actions, including using ''quick-strike'' efforts to protect assets and to stop egregious conduct. 3. Bring administrative cases involving manipulation, fraud, and other violations. 4. Hear administrative cases. 5. Sanction violators. 6. Inform the public and the industry concerning allegations of wrongdoing and associated legal actions, including through publications and through Commission orders and reports describing the alleged violations and the Commission's legal and policy analysis. 7. Collect sanctions and civil monetary penalties against violators. 8. Cooperate with the exchanges, the National Futures Association, other federal agencies, state governments and law enforcement entities, and foreign authorities to gain information for law enforcement purposes and to provide enforcement assistance as necessary and appropriate. 9. Monitor the Internet and other communication media for fraudulent √ √ √activities and other possible violations of the Act. 10. Resolve appeals in administrative enforcement matters and self-regulatory organization adjudicatory actions.
2. Require commodities professionals to meet high standards.	1. Oversee the National Futures Association registration program. 2. Require testing, licensing, and ethics training for commodities professionals. 3. Maintain regulations and oversight to ensure the effective use of disclosure documents by commodities professionals. 4. Investigate and bring administrative registration cases arising out of alleged statutory disqualification and obtain suspensions, revocations, conditions, or restrictions of registration.

SUMMARIES OF OUTCOME OBJECTIVES AND ACTIVITIES—GOAL #2—Continued

[Goal #2: Protect market users and the public.]

Outcome objective	Activity
3. Provide a forum for effectively and expeditiously handling customer complaints against persons or firms registered under the Act.	1. Provide a reparations program for commodities market users to make claims relating to violations of the Act.

SUMMARIES OF OUTCOME OBJECTIVES & ACTIVITIES—GOAL #3

[Goal #3: Foster open, competitive, and financially sound markets.]

Outcome objective	Activity
1. Ensure sound financial practices of clearing organizations and firms holding customer funds.	1. Promulgate regulations to ensure sound business, financial, and sales practices in firms participating in the commodities industry. 2. Review and oversee self-regulatory organization audit and financial practices. 3. Identify possible financial, capitalization, segregation, and supervision violations for investigation and possible prosecution. 4. Investigate possible financial, capitalization, segregation, and supervision violations. 5. Bring cases concerning financial, capitalization, segregation, and supervision violations. 6. Sanction violators.
2. Promote and enhance effective self-regulation of the commodity futures and option markets.	1. Ensure effective self-regulatory organization enforcement programs. 2. Review and approve self-regulatory organization rules and rule amendments. 3. Conduct rule enforcement reviews of self-regulatory organizations (financial practices, sales practices, trade practices, and audit trail). 4. Review and oversee self-regulatory organization audit and financial practices. 5. Review adequacy of self-regulatory organization disciplinary actions. 6. Conduct direct audits of clearing organizations and firms handling customer money to ensure compliance with capitalization and segregation rules. 7. Promulgate regulations to ensure effective self-regulation by exchanges, clearing organizations, and registered futures associations.
3. Facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions.	1. Coordinate and cooperate with global financial services regulators to share vital information and develop appropriate global standards in the commodities industry as markets emerge and evolve. 2. Participate in the International Organization of Securities Commissions and represent the Commission at international meetingsconcerning commodity regulation. 3. Participate in the President's Working Group on Financial Markets to ensure coordination of information and efforts among U.S. financial regulators. 4.Provide exemptive, interpretive, or other relief as appropriate to foster the development of innovative transactions, trading systems, and similar arrangements.
4. Promote markets free of trade practice abuses	1. Identify possible trade practice violations for investigation and possible enforcement proceedings. 2. Investigate possible trade practice violations. 3. Bring cases concerning trade practice violations. 4. Bring enforcement proceedings against violators.

Achieving The Goals: Strategies to Mission Performance—1997–2002

The Environment

The environment in which the Commodity Futures Trading Commission operates and works is dynamic. Futures and option markets are fluid. New products, as well as changes in terms and conditions of existing contracts, are common. Increasing globalization of the financial markets also presents challenges and opportunities to the agency's mission performance.

Accomplishing our mission will require a commitment continually to assess the external and internal issues and trends that may affect our mission and the way in which we must respond to meet it successfully. Evaluating and adjusting our plan will ensure that potential problems or weaknesses are managed before they develop into crises.

The Strategies

To fulfill our commitment, we must develop and employ various strategies which focus on achieving results. These strategies will define the basis for developing policies, making decisions, taking actions, allocating resources and defining program direction. They will clarify why the organization exists, what it does, and why it does it—providing a bridge to understanding how we connect to our environment.

Achieving The Goals: External Challenges—1997–2002

The Challenges

The Commodity Futures Trading Commission faces challenges external to the organization which may significantly alter its ability to meet its goals, its outcome objectives, and even its mission, depending on the weight of their influence and the timing of their occurrence.

We have identified ten such factors that may impact strategic planning at the CFTC.

The volume of trading in futures and commodity options—which is influenced, in turn, by external economic factors such as interest rate

volatility, commodity price volatility in general, and events and conditions specific to individual commodity markets.

The number and sophistication of market users—including the increasing number of institutional users trading as fiduciaries.

The variety of markets traded—in recent years, the CFTC has designated futures and option markets on a wide range of commodities, instruments, and indices. These have included: dairy products, such as milk and cheese; various energy products including: electricity; various currency and cross-currencies; inflation-indexed U.S. Treasury bonds; foreign interest rates; boneless beef; pollution rights; crop yields; and a wide range of foreign and domestic stock indices.

The growing use of over-the-counter (OTC) derivatives—such use may increase exchange trading volume as dealers in such OTC instruments attempt to hedge their resulting risk exposures. Often it also requires analysis of such OTC instruments for purposes of determining the appropriate regulatory framework.

Structural changes in the financial services industry—such as the diversification into overseas markets, and the convergence of the securities, commodities, insurance, and banking industries.

Events that destabilize the commodity markets—such as the 1987 stock market break, the 1995 collapse of Barings Bank, and the copper market events precipitated by the Sumitomo Corporation in 1996.

The globalization of financial markets—broadening the needs for market surveillance, analysis of intermarket relationships, cross-border enforcement efforts, and cooperation and information sharing with foreign authorities.

The effect of federal laws and policies—on the U.S. economy, such as the deregulation of the energy industry and changes in farm subsidy policies, spawning change and innovation such as new types of crop insurance.

The advancement in technology—which continues to introduce challenges in many areas-alternatives to the ''open-outcry'' method of trading commodity futures on the exchange floor, enhanced methods for timing and tracking trading transactions, on-line filing of financial information by market users, electronic marketing and trading of financial and risk-hedging products, and trading commodity futures and options on a global, 24-hour real-time basis.

The standards, resources, and priorities of other organizations and jurisdictions—such as self-regulatory organizations, other federal and state law enforcement agencies, and foreign authorities.

The Strategies

Develop a Responsive and Flexible Regulatory Posture—It is not possible to predict which external influences ultimately will affect the commodity futures and option industry over the next five years. However, certain trends observed in the past few years are likely to continue. In order to fulfill its goal of being a flexible and responsive regulatory body, the Commission must develop strategies to ensure that the appropriate reactions and responses to these trends are developed.

Innovation

- Respond to innovation through the timely review of new and novel trading instruments.
- Develop a capability of understanding the underlying economic effects and benefits of new product development, new markets, and new complex trading mechanisms.

Globalization

- Maintain watchful surveillance activities to monitor systemic risk of expanding markets, intermarket linkages, and cross-border trading systems.
- Foster and sustain strong relationships with foreign authorities to ensure rapid communication and responsive actions in the event of global financial uncertainty.
- Participate in international efforts to standardize world-wide market surveillance and information sharing practices.

Competitiveness

- Consider refinements to the regulatory framework to take into account the growing use of over-the-counter derivatives.
- Respond to structural changes in the financial services industry to ensure a level playing field as the commodities, securities, and banking industries become more integrated.

Dynamic Economic Forces

- Monitor general economic events and trends in order to understand dynamics affecting commodity futures and option trading.
- Respond to the changing needs of the U.S. agricultural community resulting from the passage of the Federal Agricultural Improvement Reform (FAIR) Act of 1996 and the changes it will spawn in this sector of the U.S. economy.
- Develop an automated market surveillance system capable of collecting and assimilating data from option trading, as well as commodity futures trading.
- Respond rapidly and effectively to destabilizing events, either in the United States markets or in the global marketplace, to ensure the protection of U.S. interests and customers.
- Monitor the increasing volume of the public's funds invested either directly or indirectly through commodity pools.

Advancing Technology

- Develop capability of overseeing rapidly evolving technological changes and innovations influencing the markets—electronic trading mechanisms, increasingly linked trading relationships, real-time trading, electronic commerce, expansion of the Internet and other advancements.
- Ensure that the Commission has state-of-the art computing power to collect and analyze the increasing volume of data generated by the commodity futures and option markets.

Develop and Sustain Vital Partnerships—Strong working relationships with other organizations and jurisdictions involved not only in commodity futures and option trading, but domestic and international finance and law enforcement, increase the Commission's ability to build knowledge and insight, share information, and participate in developing standard practices and policies.

Federal and State

- A key relationship that ensures regulatory consistency across the federal government is the Commission's participation in the *President's Working Group on Financial Markets.* This critical forum for coordination of regulation across financial markets brings together the leaders of the federal financial regulatory agencies to consider issues concerning risk assessment, capital requirements, internal controls, disclosure, accounting, market practices relating to trading in derivative instruments, bankruptcy law revisions, and contingency planning for market emergencies.
- Another key federal liaison is with the *U.S. Department of Agriculture.* Consistent with the mandate of the Act, the FAIR, CFTC will work with USDA staff in a risk management education effort to reach agricultural producers seeking risk management services or advice to deal with the changes resulting from its passage.

• Commission staff works through various established intergovernmental partnerships to share information and to consult on issues of importance both to the Commission and to other financial regulators. Some meetings are recurring, such as biweekly conference calls and quarterly meetings held among the CFTC, the *Securities and Exchange Commission*, the *Department of the Treasury*, the *Board of Governors of the Federal Reserve System*, the *New York Federal Reserve Bank* and the *Federal Deposit Insurance Corporation*. Others are occasional as needed, but nonetheless valuable, such as those with the *Department of Energy*, the *Department of Agriculture*, and the *Department of Labor's Bureau of Labor Statistics* on other matters.

• The working relationships with *other federal law enforcement entities* are also fundamental to an effective law enforcement effort. The Commission coordinates its enforcement efforts with agencies such as the *Department of Justice*, the *Federal Bureau of Investigation*, the *Federal Trade Commission*, the *Securities and Exchange Commission* and the *U.S. Postal Inspection Service*.

The CFTC is also represented on several interagency task forces designed to keep participants abreast of new developments in financial crimes and to coordinate the government's response.

• Enforcement efforts are coordinated with *state authorities* as well, including state commissions responsible for the regulation of corporations, securities, insurance, and banking.

Self-Regulatory

The *National Futures Association* (NFA) has been granted registration by the Commission as a futures association with specific self-regulatory responsibilities under the Commodity Exchange Act. The NFA has existed since 1982 and works in partnership with the Commission to assure high standards for industry professionals. The Commission works closely with the NFA in a variety of areas to augment scarce government resources—registration, ethics training for industry professionals, the review of disclosure documents, and issues concerning statutory disqualification of registrants.

International

• In the past several years, the Commission has cooperated with a large number of *foreign regulatory authorities* through formal memoranda of understanding (MOUs) and other arrangements to combat cross-border fraudulent and other prohibited practices that could harm customers or threaten market integrity. Cross-border information sharing among market regulators forms the linchpin of effective surveillance of global markets linked by products, participants, and information technology. The Commission currently has 18 formal arrangements for the sharing of information on enforcement matters, three arrangements related to financial information sharing, and nine cooperative arrangements for the sharing of information on matters related to foreign firms and exemptions from certain CFTC rules and one letter relating to the use of foreign settlement banks.

• A key partnership in our efforts to remain abreast of global financial issues is our membership in the *International Organisation of Securities Commissions* (IOSCO), an organization of more than 120 members from over 75 countries. IOSCO's main purposes are to provide machinery for exchanging information and expertise between regulatory authorities for the supervision of world securities and derivatives markets, to establish standards of best practice, to ensure market integrity, and to promote effective supervision and enforcement. IOSCO deals with issues affecting both developed and emerging markets.

Advisory

The Commission sponsors three advisory committees that facilitate a dialogue between the CFTC and three key groups of interested persons—the American agricultural community, the financial community, and the states.

• The *Agricultural Advisory Committee* (AAC) represents a vital link between the Commission, which regulates agricultural futures and option markets, and the agricultural community, which depends on those markets for hedging and price discovery. The AAC's 25 member organizations represent a major portion of the American agricultural community. For the last 14 years, the AAC's twice yearly meetings have fostered an ongoing dialogue between that community and the Commission.

• The *Financial Products Advisory Committee* provides a means of receiving invaluable information and obtaining advice and recommendations on issues related to financial markets. In this regard, the Committee has served as a channel for communicating to the Commission diverse viewpoints within the financial community, including the views of broker-dealers, pension fund sponsors, investment companies, futures commission merchants, commodity pool operators, and commodity trading advisors. The Committee has also served a conduit for the views of federal financial market oversight agencies, futures exchanges, and accounting firms.

• The *CFTC-State Cooperation Advisory Committee* (CSCAC) continues to play a highly productive role in facilitating the cooperation between federal and state regulatory authorities. In the context of diverse state laws and enforcement authorities, it provides a forum for the Commission to solicit the advice and recommendations of knowledgeable state officials in efforts to protect investors from fraud and secure the integrity of futures markets. Similarly, it helps the various state regulators learn about changes to federal laws and regulations as well as federal enforcement activities. This facilitates the exchange of information and the coordination of policies and enforcement efforts among the CFTC, the SEC, and the Department of Justice. Some of the issues addressed in recent years include:

—misleading advertising in the broadcast media;
—bank-financed precious metal investing;
—commodity pool operations; and,
—public availability of disciplinary actions in the futures industry.

CSCAC's membership includes representatives of federal and state law enforcement agencies, futures industry associations, and private futures brokerage firms.

Achieving the Goals: Internal Challenges—1997–2002

The Challenges

Many of the internal challenges identified may not be unique to the CFTC, but nonetheless are possible barriers to success which must be analyzed and met in order to succeed in its mission.

Diminishing Resources—with a declining pool of budgetary resources slated for domestic discretionary programs, every federal entity faces the same task of streamlining the way it operates. The Commission will continue to review its requirements and program initiatives to ensure that its fiscal perspective is sound. It must also continue to seek ways of improving performance, delegating responsibilities, and becoming more efficient.

Recruitment and Retention of Qualified Professionals—nearly 80% of the staff of the CFTC falls into four categories of professional employment: law, economics, financial audit, and futures trading. The complexity of the work at the Commission demands highly skilled workers, many with

advanced educational degrees. Competition for these individuals has always been keen, and there is no indication that this challenge will abate. Indeed, the Commission is the only federal financial regulator which does not have the authority to pay professionals at premium pay levels.

In some instances, as with lawyers and economists, the Commission has experienced the effects of a ''brain drain,'' when highly talented and skilled employees are hired away from the CFTC by other federal financial regulators who can offer premiums.

Potential for Significant Numbers of Retirements—the CFTC is in its 23rd year of operation. Many of the employees who started with the Commission in its early days are approaching retirement age. Over 12% of CFTC's on-board staff will become eligible for retirement in the next five years. This level of turnover will require significant levels of recruitment and training, particularly to fill behind the loss of so much ''institutional memory.''

Another challenge associated with a significant turnover in staff is the question of reengineering. Allocation of staff resources in the future needs to be considered in light of changes in the organization's tasks and responsibilities.

Remaining Abreast of Current Technology—perhaps more so than many other federal agencies, the Commission is dependent on a significant level of advanced technology to manage the volume and complexity of financial information we collect and analyze. Data are voluminous, require timely handling, and must be thoroughly analyzed for anomalies in trading patterns, relationships, and strategies.

Over the years, the Commission has developed and maintained an impressive technological infrastructure and has employed automation when feasible to enhance its work product and to enhance productivity in light of a static level of staffing.

The sophisticated market surveillance and market analysis the Commission performs are accomplished through the use of databases and econometric modeling. Fact patterns for enforcement investigations are supported by computer programs, and many other responsibilities could not be accomplished without the significant level of information technology at the CFTC. The need for this level of support will increase over the coming five years as technology continues to evolve and to offer new capabilities.

Commission staff must be knowledgeable as to current technologies in order adequately to perform oversight of the exchanges as they increase their use of technology. This technological trend has been reflected in the increasing linkage of global markets and the introduction of overnight trading capabilities by major U.S. exchanges linked to foreign counterparts. Advances in technology will improve the ability of the exchanges to handle their work electronically. The Commission must be knowledgeable in these technologies to fulfill its mission of fostering innovation and a flexible and responsive regulatory environment.

Remaining Educated and Informed as Innovation Changes the Industry—it has always been necessary for Commission staff to continue to improve their knowledge of developing economic trends, new trading instruments, trading strategies, and the interrelationship of markets, domestically and internationally. Without such continued investment in skill and information building, they may not be fully capable of understanding the marketplace, the economic influences on it, and its changing needs and uses. This level of skill and knowledge will need to increase over the next five years as new markets emerge around the world and market users seek new hedging strategies.

The Strategies

Strategies to Develop a Responsive Commission Culture—At the center of the Commission's mission accomplishment are the core business processes and responsibilities. Meeting these responsibilities and performing them well provides an ongoing level of regulatory presence and support to the industry and its users. These core business processes are many and include: daily market surveillance, the detection and prosecution of wrongdoing, contract market designation, rule review, market research, and audits of industry firms.

To accomplish the day-to-day activities associated with these processes, the Commission must maintain a positive culture within which to work. Over the next five years, the following strategies will guide us and help us meet the internal challenges we face.

Build a professional and highly trained staff—

- Set standards for the recruitment of qualified staff.
- Develop a recruitment and promotion strategy to build a new professional base for filling behind the anticipated high level of retirements in the next five years.
- Provide technical and advanced training to ensure that CFTC staff skills keep pace with advances in the commodities industry and permit promotion to higher levels of responsibility.

Build a strong technological infrastructure—

- Implement the Commission's Five-Year Automated Data Processing (ADP) Plan. The plan establishes: the Commission's systems development priorities; agency standards for various software applications; policies and procedures related to support provided by the Office of Information Resources Management (OIRM); and priorities for acquisition and utilization of external databases and other electronic information services.
- Sustain the Commission's End-User Advisory Group (EAG) to gain broad input into planning and prioritizing technological developments. The EAG provides: assistance and guidance to OIRM in the development of the Five-Year ADP Plan; annual review and prioritization of OIRM's systems development workload; establishment of Commission-wide standards for the use of software applications and support provided by OIRM; and priorities for acquisition and utilization of databases and information services.
- Implement and refine the CFTC's automated Market Surveillance System.
- Maintain and enhance expertise capable of overseeing the technological advancements in the domestic and international markets.
- Review and replace hardware and software with current technology to support Commission goals.

Reengineer business processes to streamline regulatory requirements and to create internal efficiencies—

- Identify areas which may benefit from reengineering, to create efficiencies for the regulated industry or for the CFTC's internal processes.

Recent examples include: the implementation of ''fast-track'' procedures for processing certain contract designation applications and rules-cutting in half the average period such contracts and rules are pending with the Commission; streamlining of the risk disclosure process; and streamlining the administrative opinions process to reduce the backlog of pending cases.

Restructure organizationally to improve performance and respond to changing mandates and trends—

- As warranted, reorganize the internal structure of the Commission to strengthen program initiatives.

Recent examples include: the strengthening of the enforcement

program through a reorgani-zation, concentrated hiring and renewed training efforts; and the establishment of an Office of International Affairs to enhance the Commission's ability to meet the increasing challenge of playing an active role in international initiatives.

Plan effectively to maximize the use of scarce budgetary resources—

- Continually review resource requirements for operations and program initiatives to ensure sound fiscal management and the optimal allocation of resources to mission requirements.
- Enhance the capability of the financial management system to aid in analyzing inputs and outputs in order to improve the measurement of outcomes at the Commission.
- Make increasing use of the data flowing from our payroll/ personnel system in order to determine how we are using our most significant resource-staff-years.
- Develop advanced planning skills to assure an emphasis on results-oriented management.

Communicate accountability to CFTC managers and staff—

- Institute a new Performance Management System to create a more effective and responsive communication tool for managers and staff.
- Employ the Annual Performance Plan to improve the commu-nication of specific goals and performance levels to staff to improve performance.
- Provide training at all levels of the Commission so that employees have the skills and current information to enable them to perform at a high level.

Achieving and Measuring Performance

Achieving Performance

The Commission may measure the success of its performance through four broad indicators:

- Markets free of disruption.
- Registered and fit market professionals and financial intermediaries.
- Self-regulatory organizations with sound financial practices and effective enforcement programs.
- Swift and aggressive investigation and prosecution of wrongdoing, with sanctions and fines levied for the maximum remedial and deterrent effect.

Measuring Performance: The Annual Performance Plan

On an annual basis, work of the Commission is directed through the Annual Performance Plan (APP). The APP establishes a full set of performance indicators and targets to ensure that day-to-day activities are appropriately defined and measured. Activities are outlined by performance indicators and performance targets for five years, FY 1998 through FY 2002.

Relating General Goals and Objectives to Performance Goals and Program Evaluation

Program evaluation, or determining how well the performance targets CFTC has established are being achieved, is necessary to measure the effectiveness and efficiency of our work. Many program priority and resource allocation decisions hinge on the knowledge of what is going well and what is not. For the first three years of this plan, the Commission will use methods and processes already in place to evaluate how we are progressing on the implementation of the Strategic Plan and the Annual Performance Plan.

Quarterly Objectives Review Process

The Quarterly Objectives reporting process provides executive management with a review of program accomplishments for the fiscal quarter just completed and program priorities for the current fiscal quarter. Also included is a summary of performance statistics, a series of output measures provided by program. This reporting process will be evaluated to determine how it may be used as the method for reporting on program progress toward meeting the goals, outcome objectives, and activities in the Strategic Plan as well as a method for setting overall priorities and allocating resources consistent with those priorities.

Management Accounting Structure Code System

Information concerning the distribution of labor at the Commission is captured through the financial reporting system called MASC—Management Accounting Structure Code System. This input data, provided by every employee on a bi-weekly schedule, reflects the hours they dedicate to various Commission activities and projects. The information is intended for use by agency program managers in their resource management activities, as well as to provide a database for documentation and support of the CFTC fee structure for such fee-generating activities as the designation of contract markets for trading on exchanges and rule enforcement reviews of the exchanges.

The MASC system will be reviewed with the goal of reengineering the present system to conform to the activity structure defined by this Strategic Plan. This evaluation will assess the current system's utility as the primary method for capturing the distribution of labor costs.

Status of Funds Reporting Process

The Status of Funds, a financial management reporting process, executed from the Commission's automated financial management system and presented to executive management, is the basis for periodic reports of the agency's financial condition and usage of its chief resource—staff-years. This process will be evaluated to determine how it may best facilitate the reporting of resource usage under the new framework of the Strategic Plan.

Stakeholders

The Commission's stakeholders-the public, the Congress, the Administration, other federal departments and agencies, market users, registrants, the exchanges, the National Futures Association, and foreign authorities-are valuable resources which must be tapped to provide critical feedback on Commission goals and priorities. Understanding their perspectives will assist the Commission in clarifying its mission and directing its resources. We will evaluate how best to use these partnerships effectively.

Leadership

The outcome envisioned by the Government Performance and Results Act is improved efficiency and effectiveness of federal programs through the establishment of a system to set goals for program performance and to measure the results.

As this planning and reporting process evolves, the Commission will evaluate how best to provide the leadership and direction to integrate program, cost, and budget information into a reporting framework that allows for fuller consideration of resource allocations, operational costs, and performance results.

Monitoring External and Internal Factors

The Commission will evaluate the most effective method to continually review key factors, external and internal to the agency, which may affect how it achieves its mission. This evaluation process will ensure that the Commission anticipates future challenges and makes adjustments to its goals, outcome objectives, and activities before potential issues and problems escalate.

As part of this evaluation the Commission will continue its refinement of vital systems such as the Market Surveillance System which

provides invaluable front-line information on commodity futures and option trading on a daily basis, and will look to defining other systems that may provide assistance in anticipating issues and directing resources.

Appendix

Understanding the Fundamentals of Commodity Futures and Options

What is a Futures Contract?
What is an Option Contract?
What is Price Discovery?
What is Daily Cash Settlement?
What is Leverage?
What is Margin?

Addresses of the Commodity Exchanges

Addresses of CFTC Offices

CFTC Team

Organizational Structure
Staffing
Occupations

Commission Concurrence

Publications and Information

Understanding the Fundamentals of Commodity Futures and Options

What Is a Futures Contract?

A futures contract is an agreement between two parties to buy and sell in the future a specific quantify of a commodity at a specific price. The buyer and seller of a futures contract agree now on a price for a product to be delivered and/or paid for at a set time in the future, know as the ''settlement date.'' Although actual delivery of the commodity can take place in fulfillment of the contract, most futures contracts are actually closed out or ''offset'' prior to delivery.

What Is an Option Contract?

An option on a commodity futures contract is an agreement between two parties which gives the buyer, who pays a market determined price known as a ''premium,'' the right (but not the obligation), within a specific time period, to exercise his option. Exercise of the option will result in the person being deemed to have entered into a futures contract at a specified price known as the ''strike price.'' In some cases, an option may confer the right to buy or sell the underlying asset directly, and these options are known as options on the physical asset.

What Is Delivery vs. Cash Settlement?

There are two types of futures contracts, those that provide for physical delivery of a commodity or other item and those which call for cash settlement. The month during which delivery or settlement is to occur is specified in the contract. Thus, a July futures contract is one providing for delivery or settlement in July.

It should be noted that even in the case of deliverable futures contracts, very few actually result in delivery. Not many speculators have the desire to take or make delivery of, for example, 5,000 bushels of wheat, or 112,000 pounds of sugar, or even one million dollars worth of U.S. Treasury bills. Rather, the vast majority of speculators in futures markets choose to realize their monetary gains or losses by buying or selling offsetting futures contracts prior to the delivery date.

Selling a contract that was previously purchased liquidates a futures position. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase. In either case, gain or loss is the difference between the buying price and the selling price.

Even hedgers generally do not make or take delivery. Most find it more convenient to liquidate their futures positions and (if they realize a gain) use the money to offset whatever adverse price change has occurred in the cash market.

What Is Price Discovery?

Futures prices increase and decrease largely because of the myriad factors that influence buyers' and sellers' judgments about what a particular commodity will be worth at a given time in the future (anywhere from less than a month to more than two years).

As new supply and demand developments occur, and as new and more current information becomes available, these judgments are reassessed, and the price of a particular futures contract may be bid upward or downward. The process of reassessment-price discovery-is continuous.

Thus, in January, the price of a July futures contract would reflect the consensus of buyers and sellers at that time as to what the value of a commodity or item will be when the contract expires in July. On any given day, with the arrival of new or more accurate information, the price of the July futures contract might increase or decrease in response to changing conditions and expectations.

Competitive price discovery is a major economic function and benefit of futures trading. The trading floor of a futures exchange is where available information about the future value of a commodity or item is translated into price. In summary, futures prices are an ever-changing barometer of supply and demand and in a dynamic market, the only certainty is that prices will change.

What Is Daily Cash Settlement?

Once a closing bell signals the end of a day's trading, the exchange's clearing organization matches each purchase made that day with the corresponding sale and tallies each member firm's gains or losses based on that day's price changes—a massive undertaking considering that well over one million futures contracts are bought and sold on an average day. Each firm, in turn, calculates the gains and losses for each of its customers having futures contracts.

Gains and losses on futures contracts are not only calculated on a daily basis, but they are also credited and debited on a daily basis. This process is known as a daily cash settlement and is an important feature of futures trading. It is also the reason a customer who incurs a loss on a futures position may be called to deposit additional funds into his account—a margin call.

What Is Leverage?

To say that gains and losses in futures trading are the result of price changes is an accurate explanation, but by no means a complete explanation. Perhaps more so than in any other form of speculation or investment, gains and losses in futures trading are highly leveraged. An understanding of leverage is crucial to an understanding of futures trading.

The leverage of futures trading stems from the fact that only a relatively small amount of money (known as initial margin) is required to buy or sell a futures contract. On a particular day, a margin deposit of only $1,000 might enable you to buy or sell a futures contract covering $25,000 worth of soybeans. Or for $20,000 you might be able to purchase a futures contract covering an index of common stocks valued at $200,000. The smaller the margin in relation to the underlying value of the futures contract, the greater the leverage.

If you speculate in futures contracts and the price moves in the direction you anticipated, high leverage can produce large profits in relation to your initial margin. Conversely, if prices move in the opposite direction, high leverage can produce large losses in relation to your initial margin.

What Is Margin?

The margin required to buy or sell a futures contract is a deposit of good faith money that can be drawn on by your brokerage firm to cover losses that you may incur in the course of futures trading. It is similar to money held in an escrow account.

Minimum margin requirements for a particular time are set by the exchange on which the contract is traded. They are typically about 5% of the current value of the commodity or asset underlying the futures contract. Exchanges continuously monitor market conditions and risks and, as necessary, raise or reduce their margin requirements. Individual brokerage firms may require higher margin amounts from customers than the exchange-set minimums.

Addresses of the Commodity Exchanges & Designated Self-Regulatory Organizations

Chicago

Chicago Board of Trade, 141 West Jackson Boulevard, Chicago, IL 60606
Chicago Mercantile Exchange, 30 South Wacker Drive, Chicago, IL 60606
MidAmerica Commodity Exchange, 141 West Jackson Boulevard, Chicago, IL 60604

Kansas City

Kansas City Board of Trade, 4800 Main Street, Kansas City, MO 64112

Minneapolis

Minneapolis Grain Exchange, 400 South Fourth Street, Minneapolis, MN 55415

Philadelphia

Philadelphia Board of Trade, 1900 Market Street, Philadelphia, PA 19103

New York

AMEX Commodities Corporation, 86 Trinity Place, New York, NY 10006
Coffee, Sugar & Cocoa Exchange, Inc., Four World Trade Center, New York, NY 10048
New York Cotton Exchange, Four World Trade Center, New York, NY 10048
New York Futures Exchange, Four World Trade Center, New York, NY 10048
New York Mercantile Exchange, One Northend Avenue, World Financial Center, New York, NY 10282
COMEX Division
NYMEX Division

Registered Futures Association

National Futures Association, 200 West Madison Street, Suite 1600, Chicago, IL 60606

CFTC Offices

Headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, Telephone: 202–418–5000
Eastern Regional Office, One World Trade Center, Suite 3747, New York, NY 10048, Telephone: 212–466–2061
Central Regional Office, 300 South Riverside Plaza, Suite 1600 North, Chicago, IL 60606, Telephone: 312–353–5990
Southwestern Regional Office, 4900 Main Street, Suite 721, Kansas City, MO 64112, Telephone: 816–931–7600
Sub-Office, 510 Grain Exchange Building, Minneapolis, MN 55415, Telephone: 612–370–3255
Western Regional Office, Murdock Plaza, 10900 Wilshire Boulevard, Suite 400, Los Angeles, CA 90024, Telephone: 310–235–6783

CFTC Team

Organizational Structure

Based in Washington, D.C. the Commodity Futures Trading Commission maintains regional offices in Chicago and New York, and has smaller offices in Kansas City, Los Angeles, and Minneapolis. The CFTC consists of five Commissioners, appointed by the President to serve staggered five-year terms. One of the Commissioners is designated by the President, with the consent of the Senate, to serve as Chairperson. No more than three Commissioners at any one time may be from the same political party.

The Chairperson oversees the management of the agency and its five major organizational units:

- Division of Economic Analysis
- Division of Enforcement
- Division of Trading and Markets
- Office of the General Counsel
- Office of the Executive Director

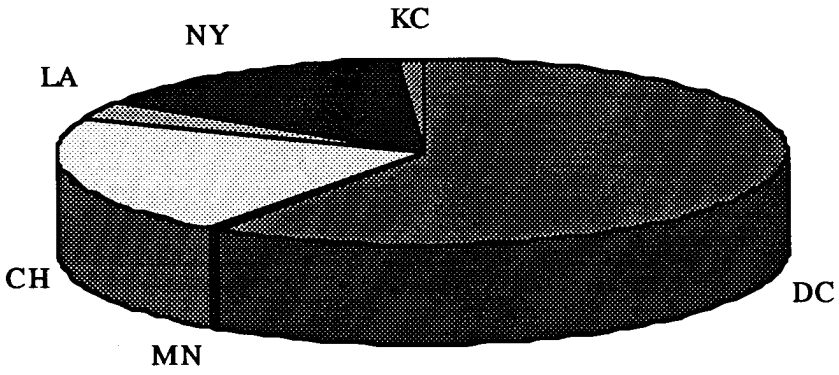
Staffing

The Commission is requesting 621 full-time equivalent staff-years, or FTEs, in FY 1999. A regional staffing distribution is shown below:

Washington, D.C. (DC)	370
Chicago, IL (CH)	131
New York, NY (NY)	90
Los Angeles, CA (LA)	21
Kansas City, MO (KC)	7
Minneapolis, MN (MN)	2
Total Staff Years	621

BILLING CODE 6351–01–P

CFTC Staffing Distribution



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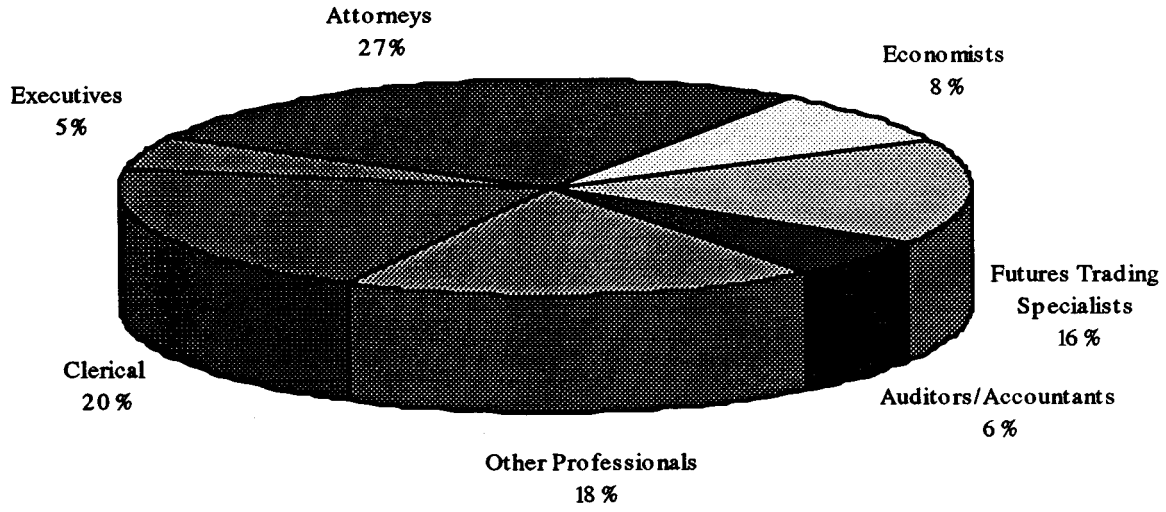
Occupations

The principal professional occupations at the Commission are attorney, economist, futures trading specialist and investigator, auditor and computer specialist. These professionals are assisted in their work by a wide range of administrative and support personnel.[1]

CFTC Occupational Distribution



Commission Concurrence

Brooksley Born, Chairperson

Joseph B. Dial, Commissioner

John E. Tull, Jr., Commissioner

Barbara Pedersen Holum, Commissioner

David D. Spears, Commissioner

Publications and Information

For a list of other CFTC publications or for more information on the CFTC, please visit the CFTC's home page on the World Wide Web. Our address is http://www.cftc.gov.

Or contact the Office of Public Affairs, Commodity Futures Trading Commission at: Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5080.

[FR Doc. 97–24388 Filed 9–15–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Task Force on Defense Reform

AGENCY: Department of Defense, Task Force on Defense Reform.

ACTION: Notice.

SUMMARY: Notice is hereby given of an open meeting of the Task Force on Defense Reform (the Task Force) on October 21, 1997. One purpose of the meeting is to meet with representatives of the Federal unions and employee associations representing federal employees in the Department of Defense (DoD). In addition, time will be set aside for anyone wishing to address the Task Force with ideas about streamlining, restructuring, and reengineering of various components or elements of the Department. A second notice containing meeting details about the open meeting will be published in early October.

The Task Force was established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in DoD, with emphasis on the Office of the Secretary of Defense, the Defense Agencies, the DoD field activities, and the Military Departments.

Notice is also hereby given for closed sessions of the Task Force on Defense Reform on September 30, and October 2, 7, 9, 14, 16, 23, 28, and 30, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meetings, and that, accordingly, these meetings will be closed to the public.

Dated: September 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–24531 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–M

[1] Executives include Chairperson, Commissioners, and managers in the Senior Executive Service. Other Professionals include computer analysts, budget and finance professionals, human resource specialists, and contracting officials.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Year 2000

ACTION: Notice of advisory committee meetings

SUMMARY: The Defense Science Board Task Force on Year 2000 will meet in closed session on October 16–17, and November 6–7, 1997 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will determine if the priorities assigned, resources allocated and funding strategy used to implement and Department's Y2K five phase process are sufficient to ensure all mission critical systems will function properly on, before and after January 1, 2000.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 11, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–24528 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Nuclear Deterrence; Meeting

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence will meet in closed session on September 29, at Headquarters, STRATCOM, Offutt AFB, Nebraska; on October 15–17, at Los Alamos National Laboratory, Albuquerque, New Mexico; and on November 18–19, 1997, at SAIC, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address the U.S. ability to deter and prevent the effective use of weapons of mass destruction against U.S. territory, forces, and allies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–24529 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Open Systems

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in open session on October 9, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Marya Bavis at (703) 527–5410.

Dated: September 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–24532 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support (ARMS) Public/ Private Task Force (PPTF); Meeting

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/ Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national emergency. This meeting will update attendees on the status of ongoing actions with decisions being made to close out or continue these actions. Topics for this meeting include ARMS Program Update, Future Funding, Program Continuance, and Production Base Assessment. This meeting is open to the public.

Date of Meeting: October 16, 1997.

Place: Washington Hilton Hotel, 1919 Connecticut Avenue, NW, Washington, DC 20009.

Time: 8 am–5 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Participants are encouraged to make reservations immediately by calling (202) 483–3000 and mentioning the ARMS Conference to obtain the negotiated rate of $130.00. The Metro Stop for this hotel is Dupont Circle. Request you contact Donna Ponce on the ARMS Team; phone (309) 782–4535, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Mary V. Yonts,

Alernate Army Federal Register Liaison Officer.

[FR Doc. 97–24576 Filed 9–15–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards; Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant

Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office of the Secretary of the Army are:

1. Ms. Alma B. Moore, Office of the Assistant Secretary of the Army (Installations, Logistics and Environment).

2. Dr. A. Michael Andrews II, Office of the Assistant Secretary of the Army, (Research, Development and Acquisition).

3. Mr. C.A. Arigo, Army Audit Agency (AAA).

4. Mr. David Borland, Office of the Director of Information Systems for Command, Control, Communications, and Computers.

5. Mr. Steven Dola, Office of the Assistant Secretary of the Army (Civil Works).

6. Ms. Sheila Clarke McCready, Office of the Chief of Legislative Liaison.

7. Ms. Tracey L. Pinson, Office of Small and Disadvantaged Business Utilization.

8. Mr. Matt Reres, Office of General Counsel.

9. Ms. Carol Ashby Smith, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

10. Mr. Robert W. Young, Office of the Assistant Secretary of the Army (Financial Management and Controller).

11. Mr. Walter W. Hollis (Alternate), Office of the Deputy Under Secretary of the Army (Operations Research).

12. Ms. Jane I. Matthias (Alternate), Office of the Assistant Secretary of Defense (Legislative Affairs).

13. Mr. Francis E. Reardon (Alternate), AAA.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–24574 Filed 9–15–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Special Weapons Performance Review Board

AGENCY: Defense Special Weapons Agency, DoD.

ACTION: Notice of membership of the Defense Special Weapons Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Special Weapons Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)((4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Special Weapons Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DSWA PRB is on or about October 22, 1997.

FOR FURTHER INFORMATION CONTACT: D. DIAL–ALFRED, Civilian Personnel Management Division (MPC), (703) 325–1106, Defense Special Weapons Agency, Alexandria, Virginia, 22310–3398.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DSWA PRB are set forth below. All are DSWA officials unless otherwise identified:

Dr. George W. Ullrich, Deputy Director
Mrs. Joan Ma Pierre, Director for Electronics and Systems
Dr. Leon A Wittwer, Chief Weapons Lethality Division
Dr. Richard Burke, Director, Operations, Analysis & Procurement Planning Division, Office of the Secretary of Defense
Ms. Lisa Bronson, Director, NATO Policy, Under Secretary of Defense for Policy, Office of the Secretary of Defense

The following DSWA officials will serve as alternate members of the DSWA PRB, as appropriate.

Mr. Robert L. Brittigan, General Counsel
Mr. Frederick S. Celec, Deputy Assistant to the Secretary of Defense (Nuclear Matters).
Mr. Michael K. Evenson, Deputy Director, Operations Directorate
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Kent L. Goering, Chief, Hard Target Defeat Program Office
Mr. Richard L. Gullickson, Chief, Simulation and Test Division
Dr. Don A. Linger, Director for Programs
Mr. Clifton B. McFarland, Jr., Director for Weapons Effects
Dr. Michael J. Shore, Chief, Special Programs Office
Mr. Robert C. Webb, Chief, Electronics Technology Division

Dated: September 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–24530 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare A Draft Environmental Impact Statement (DEIS) for the Proposed Avila Beach Remediation Plan in San Luis Obispo County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, Corps of Engineers announces its intent to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the potential effects of the proposed Avila Beach Remediation Plan on the environment. To eliminate duplication of paperwork, the Corps of Engineers intends on combining the DEIS with the existing Draft Environmental Impact Report (DEIR) prepared by the County of San Luis Obispo and California Regional Water Quality Control Board per 40 CFR 1560.2 and 1506.4.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the proposed action and/or issuance of the DEIS may be directed to: Ms. Tiffany Welch, (805) 641–2935, Regulatory Branch, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 255, Ventura, California 93001 (e mail: twelch@spl.usace.army.mil).

SUPPLEMENTARY INFORMATION:

1. Background

Union Oil of California (UNOCAL) has spilled petroleum products, including gasoline, diesel and crude oil, to soil and ground water beneath the beach and intertidal area of Avila Beach.

The beach plume runs from Avila Beach Drive to about even with San Luis Street with an additional area off of San

Antonio Street. Contamination has been identified at depths ranging from 0.5 feet at the west end of the beach to 25 feet near the pier. The highest concentration level observed in a sample has been 61,000 parts per million (ppm) located near the pier at about the high tide line at a depth of 11.5 feet. The average total recoverable hydrocarbon (TPH) value is approximately 4,100 ppm at an average depth of 10 feet. The highest benzene, toluene, ethylbenzene, and xylene (BTEX) value observed has been 760 ppm, located down from San Francisco Street at a depth of 13.5 feet.

The intertidal plume extends seaward along the pier to at least a distance of 400 feet south of Front Street with TPH concentrations as high as 63,000 ppm. The seaward extent of this plume has not been determined. This part of the plume is covered with water except for periods with extremely low tides during full and new moons.

2. Proposed Action

UNOCAL has applied to the Corps of Engineers (Corps) for a Department of the Army permit to conduct remediation activities oceanward of the high tide line (7.2 feet Mean Lower Low Water) at Avila Beach. Current activities that lie within the Corps' regulatory jurisdiction include the installation of wave energy dissipator cofferdams, solidification of hydrocarbon and hydrocarbon-affected sediment underlying the East Beach area, and no action for contamination in the intertidal zone.

3. Scope of Analysis

The scope of analysis of the DEIS includes the entire Avila Beach area, intertidal zone, and San Luis Obispo Creek estuary located in the community of Avila Beach, San Luis Obispo County, California.

4. Alternatives

The following alternative remedial technologies, and combinations thereof, are being considered: (1) No action; (2) Excavation; (3) Steam Stripping; and (4) Oxygen/Nutrient Delivery.

5. Scoping Process

a. Federal, State, and local agencies and other interested private citizens and organizations are encouraged to send their written comments to Ms. Tiffany Welch at the address provided above. This scoping comment period will expire 30 days from this date of this notice.

b. Significant issues to be analyzed in depth in the DEIS include biological resources, surface and ground water quality, air quality, recreation, erosion/sedimentation, noise, transportation, aesthetics and socioeconomics.

c. Coordination will be undertaken with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Regional Water Quality Control Board, and the California Coastal Commission.

6. Scoping Meetings

A scoping meeting will be held on October 7, 1997 from 6–8 p.m. to assess preliminary issues relative to UNOCAL's proposed remediation plan. The scoping meeting will be held on the top floor of the Community Center, 191 San Miguel Street, Avila Beach. Participation in the scoping meeting by Federal, state, and local agencies, and other interested private citizens and organizations is encouraged.

7. DEIS Schedule

The current schedule estimates that the DEIS will be available for public review and comment in November 1997.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–24573 Filed 9–15–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: October 16–17, 1997.

Place: New York, New York.

Time: 9:30 a.m. to 5:00 p.m. (October 16, 1997); 8:30 a.m. to 5:00 p.m. (October 17, 1997)

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Dr. James R. Houston, Acting Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199. Phone: (601) 634–2000.

SUPPLEMENTARY INFORMATION:

Proposed Agenda

The 66th meeting of the Coastal Engineering Research Board meeting will be hosted by the U.S. Army Engineer Division, North Atlantic, and the U.S. Army Engineer District, New York. The Board members will tour the coastal areas of New York and New Jersey on October 16. The Board will then go into Executive Session at the District office the afternoon of October 16, 1997. On October 17, the civilian members of the Board will hear planning study presentations including Atlantic Coast of New York Monitoring Program, South Shore of Staten Island, and Fire Island Inlet to Montauk Point Reformulation Study; project design presentations including Long Beach Feasibility Design, West of Shinnecock Inlet Interim Design, and Fire Island Interim Design; Shinnecock Inlet Design and Construction; projects in construction including Rockaway Beach, Coney Island, Westhampton, and Sea Bright to Manasquan; nourishment issues/sand resources; and environment concerns.

This meeting is open to the public, but since seating capacity is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

James R. Houston,

Acting Executive Secretary.

[FR Doc. 97–24577 Filed 9–15–97; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Grant of Exclusive License

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Patent No.: 5,567,078.

Title: Method for Forming a Sloped Face Ice Control Surface.

Issue Date: 10/22/96.

Patent No.: 5,567,950.

Title: Bispectral Lane Marker.

Issue Date: 10/22/96.

Patent No.: 5,585,799.

Title: Microwave Doppler Radar System for Detection and Kinematic Measurements of River Ice.

Issue Date: 12/17/96.

Patent No.: 5,588,783.

Title: Soil Reinforcement with Adhesive-Coated Fibers.

Issue Date: 12/31/96.

Patent No.: 5,595,561.

Title: Low-Temperature Method for Containing Thermally Degradable Hazardous Wastes.

Issue Date: 1/21/97.

Patent No.: 5,601,906.

Title: Geosynthetic Barrier to Prevent Access to Contaminated Sediments.

Issue Date: 2/11/97.

Patent No.: 5,605,570.

Title: Alkali-Activated Glassy Silicate Foamed Concrete.

Issue Date: 2/25/97.

Patent No.: 5,605,744.

Title: Laminated Paper Glass Camouflage.

Issue Date: 2/25/97.

Patent No.: 5,609,418.

Title: Clapeyron Thermometer.

Issue Date: 3/11/97.

Patent No.: 5,614,659.

Title: Pore-Air Pressure Measurement Device for Use in High Shock Environments.

Issue Date: 3/25/97.

Patent No.: 5,614,893.

Title: Ground Condition Monitor.

Issue Date: 3/25/97.

Patent No.: 5,624,492.

Title: Heat Treatment in the Control of the Setting of Cement.

Issue Date: 4/29/97.

Patent No.: 5,634,742.

Title: Bulkhead for and Method for Dry Isolation of Dam Gates.

Issue Date: 6/3/97.

Patent No.: 5,635,710.

Title: Subsurface Penetrometer Radiation Sensor Probe and System.

Issue Date: 6/3/97.

Patent No.: 5,639,195.

Title: Helical Panel Fasteners.

Issue Date: 6/17/97.

Patent No.: 5,644,314.

Title: Portable Geophysical System Using an Inverse Collocation-Type Methodology.

Issue Date: 7/1/97.

Patent No.: 5,657,927.

Title: Central Tire Inflation Controller

Issue Date: 7/15/97.

Patent No.: 5,648,724.

Title: Metallic Time-Domain Reflectometry Roof Moisture Sensor.

Issue Date: 7/15/97.

Patent No. 5,651,200.

Title: Debris Exclusion Devices for an Augerhead Type Hydraulic Dredge System.

Issue Date: 7/29/97.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland, (703) 428–6672 or Alease J. Berry, (703) 428–8160.

SUPPLEMENTARY INFORMATION: USP 5,567,078 is a method of controlling a breakup ice run without interfering with the natural river flow, thus reducing the possibility of flooding caused by the breakup of river ice.

USP 5,567,950 is a passive, rigid, durable, and inexpensive lane marker device that allows for remote observations of visual and infrared electromagnetic signatures.

USP 5,585,799 is a system, unaffected by darkness or low visibility conditions, for detecting river ice motions and determining river ice kinematic measurements without the need for a human observer.

USP 5,588,783 is an improved method of soil stabilization utilizing a variety of natural or synthetic fibers and adhesive coating for use in such things as berms or embankments.

USP 5,595,561 is a method of producing a concrete wasteform with an aggregate comprised of pellets formed from a waste-polymer mixture which are treated with an epoxy coating and a silicate-based powder.

USP 5,601,906 is a method and apparatus to prevent wildlife from ingesting contaminated sediments in wetlands and other areas where the sediment forms part of the natural setting for the wildlife, avoiding the destruction or alteration of the natural habitat, or the construction of landfill liners or caps.

USP 5,605,570 is a composition and method of utilizing blast-furnace slag waste products or other metallurgical slags, sodium peroxide, and water to produce a foamed concrete that is strong, lightweight, and which hardens and gains strength rapidly.

USP 5,605,744 is a material and method of composing rigid composite laminates of paper and fibrous glass layers for use in camouflage, concealment and deception.

USP 5,609,418 is a high resolution solid/liquid, pressure responsive thermometer which measures the large pressure changes which result when a mixture of a liquid and its solid are subjected to a temperature change below the equilibrium melting temperature of the bulk material.

USP 5,614,659 is a device for accurately and repeatedly measuring pore-air pressure in the vicinity of an explosive blast through the use of a shock resistant housing containing a plurality of pressure sensing ports, with a filter mounted in each port and a sensor within the housing for sensing the air pressure at each of the ports.

USP 5,614,893 is a device for obtaining collecting, and transmitting data indicative of the electromagnetic properties of the surrounding earth which can be used to monitor the structural integrity of earthen works, such as leavees, to determine the movement of contaminants through a ground area, to determine contaminants in landfills, dredge materials, or groundwater, or to detect the movement of heavy equipment over the ground.

USP 5,624,492 is a method of slowing down the hardening of cement without using chemical retarders by heat treating the cement to form an amorphous, glassy shell on the outside of the cement particles.

USP 5,634,742 is a new type of bulkhead for use in the repair and maintenance of dam gates which can easily be assembled and floated into position adjacent to a dam gate.

USP 5,635,710 is an improved device for measuring radiation in subsurface formations by utilizing a detachable sleeve to strengthen and protect the sensor probe, and once the probe has been inserted into the subsurface, the detachable sleeve allows for more accurate measurement of radiation levels.

USP 5,639,195 is a novel fastener which can be used either to fasten parallel spaced panels together and maintaining a predetermined spacing between panels, or to fasten panels parallel to walls while maintaining a predetermined space between the panel and the wall.

USP 5,644,314 is a portable ground penetrating high resolution radar system that can perform target and media identification in real-time utilizing a digitally controlled phase shifter.

USP 5,647,927 is an automated system which adjusts the air pressure in the tires of a vehicle to optimize fuel consumption, tire wear, and road deterioration.

USP 5,648,724 is an apparatus for detecting the presence, location, and extent of moisture in a roof by transmitting an electrical pulse through a transmission line embedded in the roof and using a signal analyzer to interpret the transmitted pulses.

USP 5,651,200 is an improved small augerhead type dredge system which reduces clogging of the system's pump impeller intake eye by utilizing a cutter/grate device to prevent ingestion of debris into the system's pump by cutting up vegetation and excluding debris prior to entry into the pump's impeller eye, and, by utilizing a transition box structure behind the augerhead that has a back-flush and a manual clean-out box.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 CFR Part 404.8. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) Manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–24575 Filed 9–15–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Marine Corps, Department of the Navy, DOD..

ACTION: Amend a record system.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective September 16, 1997.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: September 11, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00010

SYSTEM NAME:

Personnel Services Working Files *(February 22, 1993, 58 FR 10664).*

CHANGES:

* * * * *

PURPOSE:

Delete the last four words in the entry and replace with a period and add the following sentence 'Key Volunteer Network (KVN) personnel or Chaplains will use this information to contact the next of kin on family matters, to include decedent affairs.'

* * * * *

RECORD SOURCE CATEGORIES:

In line one, delete the words 'Marine Corps Manpower Management System; Joint Uniform Military Pay System' and replace with 'Marine Corps Total Force System'.

* * * * *

MMN00010

SYSTEM NAME:

Personnel Services Working Files.

SYSTEM LOCATION:

All Marine Corps activities. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and former members of the Marine Corps and Marine Corps Reserve; permanently and temporarily retired members of the Marine Corps and Marine Corps Reserve; members of the Fleet Marine Corps Reserve; Federal civil service employees of the Marines Corps; and dependents, survivors or appointed agents of the foregoing. Some information about dependents and other members of families or former families of Marine Corps personnel may be included in files pertaining to the Marine. Inquiries from the general public, whether addressed directly to HQMC or received via a third party, may be retained together with information obtained in the course of completing required action or in preparing a response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain information pertaining to identification; prior service; location and addresses; decedent affairs; military honors at funerals; recovery of remains; casualty notification; condolence letters to next of kin; transportation, passports and visas for next of kin of casualties medically warranted overseas; missing persons; prisoners of war; reserve disability benefits; casualty statistics; certification of eligibility for award of Purple Heart Medal; death benefits and annuity payments; Official reports of casualty; certification of life insurance coverage; investigative reports; travel of dependents; reports and death certificates substantiating casualty status; intelligence reports concerning missing and captured members; prior and present marital status; dissolution of prior marriages; birth, marriage and death certificates; adopting of children; financial responsibility; child support; claims of non-support; personal health and welfare reports; alien marriages; conduct and personal history as it pertains to marriage and its responsibilities; medical information; garnishment of pay; powers of attorney; personal financial records; police and fire reports; records of emergency data; medical care; use of exchanges, commissaries and theaters; recovery of invalid dependent identification and privilege cards; correction of naval records; defense related employment; veterans rights, benefits and privileges; awards, recommendations and/or issuances; Survivor Benefit Plan; preseparation counseling; civil readjustment; Retired Serviceman's Family Protection Plan; residence; basic allowance for quarters; leave and liberty; financial assistance; extensions of emergency leave; in service FHA mortgage insurance loans; reimbursement for damage to or loss of personal property; transportation of household goods; claims against the government; lost, damaged or abandoned property; medical bills; determinations of dependency status; claims against commercial carriers, insurers, and contractors; dependent identification and privilege cards; official correspondence (including correspondence from Marines, their families, attorneys, doctors, lawyers, clergymen, administrators/executors/guardians of estates, American Red Cross and other welfare agencies and the general public, whether addressed directly to the Marine Corps or via third parties); internal routing and processing or personal affairs matters; and records

of interviews and telephonic conversations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1071–1087, 1441–1442, 1444–1455, 1475–1488, 2771; 37 U.S.C. 401, 551, et.seq.; 38 U.S.C. 4301–4307; and E.O. 11016.

PURPOSE(S):

To provide a record for use in the administration of programs concerning the personal welfare of Marines and their dependents and/or survivors. Key Volunteer Network (KVN) personnel or Chaplains will use this information to contact the next of kin on family matters, to include decedent affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are used by intelligence and other government agencies assisting in the investigation of circumstances of casualty and in accounting for personnel who are deceased (body not recovered), missing, captured, or detained.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, vertical strip files, microfiche and card files stored in filing cabinets, shelves, tables and desks.

RETRIEVABILITY:

Files are accessed and retrieved by subject matter and by individual. Identification of individual is by name or Social Security Number.

SAFEGUARDS:

Building is located in controlled access area with security guards on 24 hour duty. Access to information contained in the files is limited to Officials and employees of Headquarters, U.S. Marine Corps acting in their official capacity upon demonstration of a need-to-know basis. Records held by field activities are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Locked and/or guarded offices.

RETENTION AND DISPOSAL:

Files are retained for differing lengths of time, depending upon the purpose of the information contained therein. Death benefit data are retained for five years and then destroyed; records of emergency data are retained until the Marine's death or separation from active duty or active reserves; Department of Defense Reports of Casualty are retained for such period as deemed necessary, and then transferred to the Historical Division, Headquarters, U.S. Marine Corps; casualty statistics and rosters, and statistical reports are retained for such period as deemed necessary and then transferred to Historical Division, Headquarters, U. S. Marine Corps or destroyed as deemed appropriate; missing and captured personnel data and unusual miscellaneous casualty topic data are retained for such period as deemed necessary and then destroyed; files concerning dependency determination are retained for one year and then destroyed; files concerning veterans rights, benefits and privileges are retained indefinitely or until the member and all eligible survivors are deceased; files concerning correction of naval records are destroyed upon completion of action; files regarding adjudication of claims against the government are retained for six months and then destroyed; files containing information which could be considered to be derogatory nature are disposed of as directed by competent authority; all other files are retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (M&RA), Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code M&RA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775. Telephone (703) 614–2558.

Correspondence should contain the full name, Social Security Number and signature of the requester. The individual may visit the above location for review of files. Proof of identification may consist of the active, reserve, retired or dependent identification card, the Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license, social security card, or by providing such other data sufficient to ensure the individual is the subject of the inquiry.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code M&RA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775. Telephone (703) 614–2558.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Marine Corps Manpower Management System; Joint Uniform Military Pay System; Marine Corps Military Personnel Records System; Marine Corps Deserter Inquiry File; Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations; Other agencies of federal, state, and local governments; Educational institutions; Medical reports and psychiatric evaluations; Financial institutions and other commercial enterprises; Civil courts and law enforcement agencies; Correspondence and telephone calls from private citizens initiated directly to the Marine Corps or via the U.S. Congress and other agencies; Investigative reports; American Red Cross and similar welfare agencies; Department of Veterans Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–24533 Filed 9–15–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 1997.

ADDRESSES: Written comments and requests for copies of the proposed

information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 10, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Title: Streamlined Clearance Process for Discretionary Grant Information Collections.

Frequency: Annually.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: This information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined clearance process will begin when the Department submits the information collection to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice in the **Federal Register**. OMB will then have 60 days after the public comment period begins to reach a decision on the information collection.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Annual Report of Independent Living Services for Older Individuals who are Blind.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 440.

Abstract: Section 752(I)(2)(A) of the Rehabilitation Act Amendments of 1992 (Attachment A) requires each grantee under this program to submit an annual report to the Commissioner of the Rehabilitation Services Administration (RSA) on essential demographic, service and outcome information. The information collected by RSA will be used to evaluate the program, including the new Government Performance and Results Act (GEPRA) requirements, and make recommendations to Congress. It provides RSA with a uniform and efficient method of monitoring the program for compliance with statutory regulatory requirements and to determine substantial progress required for funding of all non-competing continuation discretionary grants. The respondents are State Vocational Rehabilitation Agencies.

Office of Postsecondary Education

Type of Review: New.

Title: Controlling the Cost of Postsecondary Education.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local and Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 1,500.

Abstract: This first time application package provides information and forms for those wishing to apply for grants that demonstrate projects addressing issues of cost control at postsecondary institutions.

[FR Doc. 97–24464 Filed 9–15–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 16, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 10, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Financial and Performance Report, Library Services and Construction Act (LSCA), Titles I, II, and III.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 55.

Burden Hours: 2,481.

Abstract: The State Library Administrative Agency submits the Financial and Performance Report reflecting project expenditures and completion data, the relationship of the projects to the LSCA Long-range Plan, and evaluation project data for Title I (Public Library Services); Title II (Public Library Construction and Technology Enhancement); and Title III (Interlibrary Cooperation and Resource Sharing).

[FR Doc. 97–24463 Filed 9–15–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting.

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Thursday, September 25, 1997, 8:30 am–4:00 pm.

ADDRESSES: Sheraton Inn, Grand Ballroom, 180 Water Street, Plymouth, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Thursday, September 25, 1997

8:30–8:45 am—Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman

8:45–9:15 am—Working Session: Discussion of the ESR Task Force Work Plan

9:15–10:15 am—Working Session: Discussion of a Draft Position Paper on the Roles of Reliability Organizations

10:15–10:30 am—Break

10:30–11:30 am—Working Session: Review of a Draft Position Paper on the Roles of Reliability Organizations

11:30–12:00 pm—Public Comment Period

12:00–1:15 pm—Lunch

1:15–2:15 pm—Working Session: Discussion of Technology Issues Affecting Reliability

2:15–3:30 pm—Panel Discussion: The Need to Extend FERC Jurisdiction to All Entities In Order to Provide Reliability Oversight

3:30–4:00 pm—Public Comment Period

4:00 pm Adjourn.

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Plymouth, Massachusetts, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://vm1.hqadmin.doe.gov:80/seab/.

Issued at Washington, D.C., on September 10, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–24512 Filed 9–15–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $30 and $15 each, respectively, or available without charge after October 1, 1997 at the Internet address: http://www.bpa.gov/Corporate/CD/CD.htm.

ADDRESSES: Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CD, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: The Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. The BPI is available on two 3½ inch diskettes in Microsoft's Word for Window's format in addition to the printed version. Please specify which is desired when placing the order. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–133 Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on August 29, 1997.

Steven C. Kallio,

Manager, Contracts and Property Management.

[FR Doc. 97–24511 Filed 9–15–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. FA95–53–001]

El Paso Electric Company; Notice of Filing

September 10, 1997.

Take notice that on September 8, 1997, El Paso Electric Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection,.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24452 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–99–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 8, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1997:

Ninth Revised Sheet No. 5
Sub. Eighth Revised Sheet No. 6
Ninth Revised Sheet No. 6

Kern River states that the purpose of this filing is to update Kern River's Tariff to reflect the Commission approved Annual Charge Adjustment surcharge of $.0021 per Dth to be effective for the twelve-month period beginning October 1, 1997 and to correct a clerical error on the Statement of Rates for interruptible transportation.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24461 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–339–003]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 8, 1997, KO Transmission Company (KO Transmission) tendered for filing Second Revised Sheet No. 147 to comply with the GISB Standards in Order No. 587. KO Transmission proposes an effective date of September 8, 1997 for the revised tariff sheet.

KO Transmission states that the revised tariff sheet reflects changes to comply with an August 27, 1997 Letter Order in this docket.

KO Transmission states that copies of this filing were served to all of its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make any protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24455 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–194–005]

Northern Border Pipeline Company; Notice of Compliance Filing

September 10, 1997.

Take notice that on September 2, 1997, Northern Border Pipeline Company (Northern Border), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1998:

First Revised Volume No. 1

Original Sheet No. 106A

Tariff Sheet/Effective Date

Second Revised Sheet Number 102—August 1, 1997

Original Sheet Number 102A—August 1, 1997

Fourth Revised Sheet Number 108—August 1, 1997

Second Revised Sheet Number 109—June 1, 1996

Third Revised Sheet Number 110—June 1, 1996

First Revised Sheet Number 113—August 1, 1997

Second Revised Sheet Number 114—August 1, 1997

Original Sheet Number 114A—August 1, 1997

Fourth Revised Sheet Number 117—June 1, 1996

Northern Border The tariff sheets are being filed in compliance with the October 15, 1996 Stipulation and Agreement (S&A) and the approval, with one minor modification, of such in the Federal Energy Regulatory Commission's (Commission) order issued August 1, 1997 in Docket No. RP96–45–004 (August 1 Order). Northern Border is modifying tariff revision numbers, pagination, applicable effective dates and updating the Commission's record of Northern Border's tariff in accordance with the Commission's approval of the S&A in its August 1 Order. Such filing is also made necessary due to the issuance of overlapping tariff sheets in Northern Border's GISB compliance tariff filings which became effective subsequent to the filing of the S&A but prior to its approval.

Northern Border states that copies of this filing have been sent to all of its contracted shippers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 97–24454 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–45–006]

Northern Border Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

September 10, 1997.

Take notice that on September 3, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective as listed below:

Northern Border states that the purpose of this filing is to comply with ordering paragraph (E) of the Commission's order issued on August 1, 1997 in Docket Nos. CP95–194–000, *et al.* In the instant filing, Northern Border is tendering a tariff sheet implementing a straight-line depreciation rate of 2.5 percent for purposes of financial accounting and the recording of a regulatory asset (liability), as appropriate, for the difference between the depreciation expense required under the straight-line method and transmission depreciation expense allowed for tariff billing purposes which was required by the order.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 1, 1997, file with the Federal Energy Regulatory Commission, 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 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests 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 must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24447 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–275–007 and TM97–2–59–005]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 5, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on June 1, 1997:

2nd Substitute Fifth Revised Sheet No. 61
2nd Substitute Fifth Revised Sheet No. 62
2nd Substitute Fifth Revised Sheet No. 63
2nd Substitute Fifth Revised Sheet No. 64

Northern states that the reason for this filing is to correct the unaccounted-for gas percent stated in the footnote of Substitute Fifth Revised Sheets Nos. 61–64, as filed on July 16, 1997, from 0.99 percent (0.0099) to 0.93 percent (0.0093).

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24453 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–722–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

September 10, 1997.

Take notice that on September 2, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP97–722–000 a request pursuant to §§ 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon certain delivery facilities in Montrose County, Colorado and a related transportation service, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it plans to abandon its Uravan Lateral Line and Umetco Meter Station and to abandon the related transportation service. The Uravan Lateral Line consists of approximately 12 miles of 4-inch pipeline extending from Northwest's Nucla Lateral to a point of termination at the Umetco Meter Station. The Umetco Meter Station consists of two 4-inch meters, two 1-inch regulators and appurtenances.

Service to the Umetco Meter Station has been according to a Direct Sales Contract (Contract) dated April 1, 1978, as amended, between Northwest and Umetco Minerals Corporation (Umetco). The primary term of the Contract extended until March 31, 1980 and month to month thereafter subject to termination upon one month written notice by either party. On August 25, 1992, Northwest notified Umetco that it was terminating the Contract effective October 31, 1992. No deliveries have been provided at the Umetco Meter Station since May, 1992. Since Umetco is the only customer served by the Uravan Lateral Line and Umetco Meter Station and the facilities are no longer needed, Northwest proposes to abandon the Uravan Lateral Line in place and to remove the Umetco Meter Station. On December 16, 1992, Umetco confirmed that it had no objection to Northwest's proposed abandonment of the delivery facilities. The cost of abandoning the Uravan Lateral Line and the Umetco Meter Station is estimated at $15,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24450 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–683–000]

Ozark Gas Transmission; Notice of Application

September 10, 1997.

Take notice that on August 6, 1997, Ozark Gas Transmission System (Ozark), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed in Docket No. CP97–683–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate a receipt point in Franklin County, Arkansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark proposes to install and operate a receipt point in Franklin County in order to receive natural gas production into its system. Ozark states that the proposed receipt point would allow Ozark to receive an additional 1,500 Dekaterm equivalent of natural gas per day into its system. Ozark would install approximately 4,500 feet of 4.5-inch diameter pipe and the necessary metering and tie-in facilities on its pipeline system. Ozark also states that it would finance the estimated $71,600 construction cost of the proposed receipt point with funds on hand.

Ozark states that the natural gas volumes it would receive via the proposed receipt point are within certificated volumes on Ozark's system, and the addition of receipt point facilities would be consistent with

Ozark's open access tariff and blanket transportation certificate. Ozark also states that it has filed its request in this proceeding in compliance with the Stipulation and Agreement issued in Docket No. CP78–532–000, *et al.* [(22 FERC ¶ 61,334 at 61,578 (1983)].

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1997, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the NGA (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 NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its 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 Ozark to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24448 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–517–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 8, 1997, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, to become effective October 8, 1997:

First Revised Sheet No. 116

Paiute states that the purpose of this filing is to comply with the Commission's Order No. 636–C, Order on Remand, issued February 27, 1997 in Docket Nos. RM91–11–006, *et al.* Paiute states that it has revised its right-of-first-refusal tariff provisions to reduce the term cap for matching a competitive bid from twenty years to five years, consistent with the requirements of Order No. 636–C.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24458 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–9–001]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 5, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Sub Seventeenth Revised Sheet No. 20
Sub Eighteenth Revised Sheet No. 21A
Sub Twenty-Fourth Revised Sheet No. 22
Sub Eighteenth Revised Sheet No. 22A
Sub Fifth Revised Sheet No. 23A
Sub Third Revised Sheet No. 23C

Tennessee states that the purpose of the filing is to correct an error reflected in the August 29, 1997 filing in this docket. This filing correctly reflects the $.0022 ACA surcharge in the maximum effective commodity rates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24460 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–513–000]

Texaco Natural Gas Inc. v. Sea Robin Pipeline Company; Notice of Complaint

September 10, 1997.

Take notice that on September 4, 1997, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.206, Texaco Natural Gas Inc. (Texaco) tendered for filing a complaint against Sea Robin Pipeline Company (Sea Robin).

Texaco alleges that Sea Robin failed to follow its tariff provision in allocating capacity on a net present value basic and that Sea Robin failed to provide notice in a timely fashion to all shippers that Sea Robin instead intended to allocate capacity on a first-come, first-served basis.

Texaco requests that the Commission order Sea Robin to allocate capacity on its system in future months based on the net present value procedure in its tariff.

Texaco also alleges that Sea Robin engaged in unduly discriminatory and preferential actions related to the manner in which it provided notice of capacity constraints and solicited bids for available capacity.

Texaco further asks the Commission to investigate the adequacy of Sea Robin's maintenance of its Erath Compressor Station to determine whether inadequate care in maintaining that facility contributed to the capacity constraint resulting from schedule maintenance on Sea Robin's Vermilion Block 149 Compressor Station.

Texaco also requests that Sea Robin be required to make restitution to Texaco for the damages it incurred as the direct result of Sea Robin's actions.

Any person desiring to be heard or to protest with respect to said Complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 26, 1997. All protests filed with the Commission shall be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. Answers to this complaint are due on or before October 3, 1997.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24456 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–727–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 10, 1997.

Take notice that on September 5, 1997, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP97–727–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas act (18 CFR 157.205, 157.211) for approval to operate an existing previously installed pursuant to the authority of Section 311 of the Natural Gas Policy Act of 1978 (Section 311) and Section 284.3(c) of the Commission's Regulations in May 1985, under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to operate the LGS-Bayou Pigeon Delivery Meter located in Iberia Parish, Louisiana, under blanket authorization for Texas Petroleum Investment Company (Texas Petroleum). It is asserted that Texas Petroleum is now the owner of the production facilities at this location and has requested that Texas Gas file for authority to make deliveries of natural gas under blanket authorization at this point. Texas Gas further asserts that Texas Petroleum has requested up to 50 MMBtu per day of interruptible transportation to be used as gas lift gas for Texas Petroleum's operations.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activities 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 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24451 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–518–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 10, 1997.

Take notice that on September 5, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is October 6, 1997.

Transco states that the purpose of the instant filing is to conform the provisions of Transco's Rate Schedule S–2 storage service to the service currently provided by Texas Eastern Transmission Corporation (Texas Eastern) to Transco under Texas Eastern's Rate Schedule X–28. Transco's purchase of Rate Schedule X–28 service is the means by which Transco provides service to its customers under Rate Schedule S–2. The X–28 service has changed from a ''gas lending and borrowing'' service to a traditional storage service, thereby necessitating corresponding changes to Transco's Rate Schedule S–2 service.

Transco states that copies of the filing are being mailed to its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24459 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–516–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1997.

Take notice that on September 8, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective October 8, 1997:

Third Revised Sheet No. 86

Viking states that the purpose of this filing is to comply with the Commission's requirements set forth in Order No. 636–C, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation under Part 284 of the Commission's Regulations, Docket No. RM91–11–006 and Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Docket No. RM87–34–072, 78 FERC ¶ 61,186 (1997) issued on February 27, 1997. Accordingly, Viking has revised the contract matching term cap provided for under its right-of-first-refusal provisions to reflect the new five year maximum cap required by the Commission in Order No. 636–C.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24457 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–717–000]

Williston Basin Interstate Pipeline Company; Notice of Application for Abandonment

September 10, 1997.

Take notice that on August 29, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a compressor unit and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to abandon Compressor Unit No. 3 and appurtenant facilities at the Lovell Compressor Station in Big Horn County, Wyoming. Williston Basin states that due to the change in location in gas supply on its system, it has not required the service of all three compressor units at the Lovell Compressor Station and, therefore, sees no need for Compressor Unit No. 3 at this location in the future. Williston Basin states that it will leave Compressor Station No. 3 in place until such time as it may be required for another purpose or location. However, Williston Basin states, Compressor Unit No. 3 will not be connected to either the suction or discharge lines and will be inoperable. Williston Basin asserts that the abandonment will not affect its current operations or impact its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, 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 385.214 or 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its 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 Williston Basin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24449 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3945–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 4, 1997.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER97–3945–000]

Take notice that on August 12, 1997, New York State Electric & Gas Corporation (''NYSEG''), filed a Service Agreement between NYSEG and New York State Electric & Gas Corporation, (''Customer''). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on May 28, 1997 with revised sheets effective on June 11, 1997, in Docket No. OA97–571–000 and OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 1, 1997 for the New York State Electric & Gas Corporation Service Agreement. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No. ER97–4181–000]

Take notice that on August 13, 1997, Consumers Power Company (Consumers), tendered for filing two service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit). The two transmission customers are Commonwealth Edison Company and the City of Bay City. A copy of the filing was served on the Michigan Public Service Commission, Detroit and the two transmission customers.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER97–4182–000]

Take notice that on August 13, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 1997, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for PG&E Rate Schedule FERC Nos. 88, 91, 138 and 176. The filing also corrects 3 paragraph references in Appendix A to PG&E Rate Schedule FERC No. 176.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. 3E Energy Services, L.L.C.

[Docket No. ER97–4183–000]

Take notice that on August 14, 1997, 3E Energy Services, L.L.C. (3E) petitioned the Commission for (1) blanket authorization to sell natural gas and electric power at market-based rates; (2) acceptance of 3E's Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations; and (4) such other waivers and authorizations as have been granted to other natural gas and power marketers, all as more fully set forth in 3E's petition on file with the Commission.

3E states that it intends to engage in natural gas and electric power transactions as a marketer. As a natural gas and electric power marketer, 3E proposes to make such sales on rates, terms and conditions to be mutually agreed-to with purchasing parties.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER97–4184–000]

Take notice that on August 14, 1997, Commonwealth Edison Company (ComEd) submitted for filing a Short-Term Firm Service Agreement with Enron Power Marketing, Inc. (Enron), an unexecuted Short-Term Firm Service Agreement with Morgan Stanley Capital Group, Inc. (MSCGI), a Short-Term Firm Service Agreement with Electric Clearinghouse, Inc. (ECI), and two Non-Firm Service Agreements with Engage Energy US, L.P. (Engage), and New York State Electric & Gas Corporation (NYSEG), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Enron, MSCGI, ECI, Engage, NYSEG, and the Illinois Commerce Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Texas-New Mexico Power Company

[Docket No. ER97–4185–000]

Take notice that on August 14, 1997, Texas-New Mexico Power Company, tendered for filing an application for a Commission order accepting a proffered rate schedule for market-based rates and providing for associated authorizations and requirements.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Agway Energy Services, Inc.

[Docket No. ER97–4186–000]

Take notice that on August 14, 1997, Agway Energy Services, Inc. (Agway) petitioned the Commission for acceptance of Agway Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Agway intends to engage in wholesale electric power and energy purchases and sales as a marketer. Agway is not in the business of generating or transmitting electric power. Agway is a wholly-owned subsidiary of Agway Holdings, Inc. which, through its parent and affiliates, sells and distributes agricultural products and other services to the agricultural community.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4187–000]

Take notice that on August 13, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to NP Energy Inc. (NP Energy).

O&R requests waiver of the notice requirement so that the service agreement with NP Energy becomes effective as of August 4, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and NP Energy.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER97–4189–000]

Take notice that on August 14, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Aquila Power Corporation
Green Mountain Power
Montaup Electric Company
New Energy Ventures, Inc.
Northeast Energy Services, Inc.
Tractebel Energy Marketing, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies and Green Mountain Power have also filed Notices of Cancellation for service under the Companies' Power Sales and Exchange Tariffs (FERC Electric Tariff Original Volume Nos. 5 and 3) and Green Mountain Power's respective FERC Rate Schedules.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: Setpember 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4190–000]

Take notice that on August 14, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Public Service Electric &

Gas to purchase electric capacity and energy pursuant to the negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Public Service Electric & Gas.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER97–4191–000]

Take notice that on August 14, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Market Responsive Energy Inc. (MREI) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of July 15, 1997.

Copies of the filing have been served upon MREI and the New Jersey Board of Public Utilities.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER97–4192–000]

Take notice that on August 14, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Delmarva Power & Light Company (DP&L) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of July 15, 1997.

Copies of the filing have been served upon DP&L and the New Jersey Board of Public Utilities.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER97–4193–000]

Take notice that on August 14, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to American Electric Power Service Corporation (AEP) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of July 15, 1997.

Copies of the filing have been served upon AEP and the New Jersey Board of Public Utilities.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER97–4194–000]

Take notice that on August 14, 1997, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Long-Term Firm Point-To-Point Transmission Service Agreement between PacifiCorp's Merchant Function and PacifiCorp's Transmission Function under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER97–4195–000]

Take notice that on August 14, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and The Energy Authority, Inc. (TEA). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to TEA.

Tampa Electric proposes an effective date of August 18, 1997 for the Contract, or, if the Commission's notice requirement cannot be waived, the earlier of October 13, 1997 or the date the Contract is accepted for filing.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER97–4196–000]

Take notice that on August 14, 1997, Central Illinois Public Service Company (CIPS) submitted an executed umbrella short-term firm transmission service agreement, dated July 17, 1997, establishing Delhi Energy Services, Inc., as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of July 17, 1997, for the service agreement with Delhi Energy Services, Inc. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on Delhi Energy Services, Inc., and the Illinois Commerce Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4197–000]

Take notice that on August 14, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of Fina Energy Services Company and CNG Energy Service Corporation. PJM requests an effective date of August 14, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Electric Power Company

[Docket No. ER97–4198–000]

Take notice that on August 14, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an index of service agreements to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Volume No. 7. Also submitted are forms of service agreements for short term firm transmission service and network integration transmission service for Wisconsin Electric's merchant function. The instant submittal is occasioned by the Commission's order in Allegheny Power System Inc. (Docket Nos. OA96–18 *et al.*).

Wisconsin Electric requests an effective date of July 9, 1996, in accordance with the order in Allegheny.

Copies of the filing have been served on all Wisconsin Electric transmission service customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER97–4199–000]

Take notice that on August 15, 1997, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Equitable Power Services Company and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to Equitable Power Services Company as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER97–4200–000]

Take notice that on August 15, 1997, Virginia Electric and Power Company (Virginia Power) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with The Wholesale Power Group, Vitol Gas Electric LLC, and PacifiCorp Power Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER97–4201–000]

Take notice that on August 15, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Network Integration Transmission Service Agreement between PacifiCorp's Merchant Function and PacifiCorp's Transmission Function under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Total Energy, Inc.

[Docket No. ER97–4202–000]

Take notice that on August 15, 1997, Total Energy, Inc. (Total), petitioned the Commission for acceptance of Total Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Total intends to engage in wholesale electric power and energy purchases and sales as a marketer. Total is not in the business of generating or transmitting electric power.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER97–4203–000]

Take notice that on August 15, 1997, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, First Sheet Nos. 118 and 119 to PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11, Pro Forma Open Access Transmission Tariff (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Union Electric Company

[Docket No. ER97–4204–000]

Take notice that on August 15, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and Commonwealth Edison Company, Delhi Energy Services, Inc., Heartland Energy Services, Inc., Valero Power Services Company and Virginia Electric and Power Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Company Services, Inc.

[Docket No. ER97–4205–000]

Take notice that on August 15, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed eight (8) service agreements for firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies. Three (3) of the agreements are between SCS, as agent for Southern Companies, and Electric Clearinghouse, Inc., and two (2) agreements are between SCS, as agent for Southern Companies, and Vitol Gas & Electric. The other three (3) agreements are between SCS, as agent for Southern Companies, and (i) Aquila Power Corporation, (ii) Federal Energy Sales, Inc., and (iii) Southern Wholesale Energy, a Department of SCS.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4206–000]

Take notice that on August 15, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Dayton Power & Light Company, Valero Power Services Company, and VTEC Energy, Incorporated, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is July 1, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Georgia Power Company

[Docket No. ER97–4207–000]

Take notice that on August 15, 1997, Georgia Power Company filed a Notice

of Cancellation of FERC Electric Tariff, Original Volume No. 1 (Full Requirements Wholesale Service), as amended. Georgia Power proposes to cancel this rate schedule because there are no longer any full requirements wholesale for resale customers who purchase electric service pursuant to this rate schedule. Since no full requirements purchasers would be affected by this action, Georgia Power requests that the cancellation be made effective October 1, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Gulf Power Company

[Docket No. ER97–4208–000]

Take notice that on August 15, 1997, Gulf Power Company filed a Notice of Cancellation of FERC Electric Tariff, Second Revised Volume No. 1, as amended. Gulf Power proposes to cancel this rate schedule because there are no longer any full requirements wholesale for resale customers who purchase electric service pursuant to this rate schedule. Since no full requirements purchasers would be affected by this action, Gulf Power requests that the cancellation be made effective October 1, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER97–4209–000]

Take notice that on August 15, 1997, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Equitable Power Services Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Equitable Power Services Company* pursuant to the tariff, and for the sale of capacity and energy by *Equitable Power Services Company* to WestPlains Energy-Kansas pursuant to *Equitable Power Services Company's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Equitable Power Services Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER97–4210–000]

Take notice that on August 15, 1997, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Equitable Power Services Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Equitable Power Services Company* pursuant to the tariff, and for the sale of capacity and energy by *Equitable Power Services Company* to Missouri Public Service pursuant to *Equitable Power Services Company's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Equitable Power Services Company*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER97–4211–000]

Take notice that on August 15, 1997, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy—Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Equitable Power Services Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy—Colorado to *Equitable Power Services Company* pursuant to the tariff, and for the sale of capacity and energy by *Equitable Power Services Company to WestPlains Energy—Colorado pursuant to Equitable Power Services Company's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Equitable Power Services Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Southern Company Services, Inc.

[Docket No. ER97–4213–000]

Take notice that on August 15, 1997, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company (APCo), tendered for filing a Delivery Point Specification Sheet dated as of June 1, 1997, reflecting the abandonment of a delivery point to the City of Dothan. The abandoned delivery point will no longer be served under the terms and conditions of the Amended and Restated Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated June 16, 1994.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Power Company

[Docket No. ER97–4214–000]

Take notice that on August 15, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Florida Power Corporation (Transmission Customer), dated as of July 16, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of July 16, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. The Detroit Edison Company

[Docket No. ER97–4215–000]

Take notice that on August 15, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Virginia Electric and Power Company, dated as of July 14, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 14, 1997.

Comment date: September 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–24522 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3880–000, et al.]

Southern California Edison, Company, et al. Electric Rate and Corporate Regulation Filings

September 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER97–3880–000]

Take notice that on August 21, 1997, Southern California Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas & Electric Company

[Docket No. ER97–3899–000]

Take notice that on August 20, 1997, Southern Indiana Gas & Electric tendered for filing an amendment in the above-referenced docket.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Infinite Energy, Inc.

[Docket No. ER97–3923–000]

Take notice that on August 20, 1997, Infinite Energy, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER97–4028–000]

Take notice that on August 28, 1997, Western Resources, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4263–000]

Take notice that on August 19, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and N, P. Energy, Inc. (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 28, 1997 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4264–000]

Take notice that on August 19, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and Williams Energy Services Company (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 21, 1997 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER97–4265–000]

Take notice that on August 19, 1997, Florida Power Corporation, tendered for filing a service agreement providing for short-term service to American Electric Power, pursuant to Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1) FERC Electric Tariff, Original Volume No. 8. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on August 20, 1997.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER97–4266–000]

Take notice that on August 19, 1997, Florida Power Corporation tendered for filing a service agreement providing for short-term service to Virginia Electric & Power Company, pursuant to Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1) FERC Electric Tariff, Original Volume No. 8. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on August 20, 1997.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER97–4267–000]

Take notice that on August 19, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point service to NESI Power Marketing, Inc. (NESI), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on August 20, 1997.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER97–4268–000]

Take notice that on August 19, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for firm point-to-point service to NESI Power Marketing, Inc. (NESI), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on August 20, 1997.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER97–4269–000]

Take notice that on August 19, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Public Service Electric and Gas Company.

NSP requests that the Commission accept both the agreements effective July 24, 1997, and requests waiver of the Commission's notice requirements in

order for the agreements to be accepted for filing on the date requested.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER97–4270–000]

Take notice that on August 19, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER97–4271–000]

Take notice that on August 19, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and itself. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER97–4272–000]

Take notice that on August 19, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, submitted for filing Firm Transmission Service Agreement with Wisconsin Power and Light Company (WPL) dated August 1, 1997 and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of August 1, 1997 for the Agreement and, accordingly, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on WPL, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER97–4274–000]

Take notice that on August 20, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with AYP Energy, Inc., for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on August 11, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Atlantic City Electric Company

[Docket No. ER97–4275–000]

Take notice that on August 20, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Entergy Power Marketing Corp. (Entergy), Promark Energy (Promark) and Market Responsive Energy, Inc. (MREI) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement with MREI be accepted to become effective on July 22, 1997 and the agreements with Entergy and Promark be accepted to become effective on August 20, 1997.

Atlantic Electric states that a copy of the filing has been served on MREI, Promark and Entergy.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER97–4276–000]

Take notice that on August 20, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Wabash Valley Power Association, Inc. (WVPA).

Cinergy and WVPA are requesting an effective date of August 15, 1997.

Comment date: September 23, 1997, in accordance with Standard paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER97–4277–000]

Take notice that on August 20, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Aquila Power Corporation (Aquila).

Cinergy and Aquila are requesting an effective date of August 15, 1997.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24523 Filed 9–15–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5892–9]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Fall meeting of the Ozone Transport Commission to be held on September 19, 1997.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on September 19, 1997 from 9 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Hotel and Conference Center, 250 Market Street, Portsmouth, NH 03801, (603) 431–2300.

FOR FURTHER INFORMATION CONTACT:

EPA:

Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

THE STATE CONTACT:

Host Agency:

Kenneth Colburn, New Hampshire Dept. of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033, (603) 271–1370.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840 e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level oxone formation, transport, and control within the transport region.

The purpose of this notice is to announce that this Commission will meet on September 19, 1997. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508-3840 (or by e-mail: ozone@sso.org) on Thursday, September 11, 1997. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under sections 110 and 126 of the Clean Air Act, and to discuss market-based programs to reduce pollutants that cause ozone.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 97–24549 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5892–6]

Termination of Pesticide Producing Establishment's Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Agency's intention to terminate a number of pesticide producing establishment registrations 60 days following the date of publication of this document for failure to file annual pesticide production reports as required by section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The list of domestic and foreign pesticide producing establishments appearing in this document will have their establishment registration terminated on November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Domestic pesticide producing establishments should contact the EPA Regional office having jurisdiction for the state where their parent company is located. A listing of the EPA Regional offices is included in this document. Foreign pesticide producing establishments should contact: Carol L. Buckingham, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Agriculture and Ecosystems Division (2225A), 401 M Street, SW, Washington, DC 20460 USA, telephone: 202–564–5008; Fax: 202–564–0085; e-mail: buckingham-carol@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 7 of FIFRA requires that all establishments that produce any pesticide or active ingredient used in producing a pesticide, or device subject to this Act be registered with the Agency, and that all such establishments submit annual production reports to the Agency. The EPA regulations at 40 CFR part 167 establish requirements concerning these annual reports and the information that must be in annual reports (40 CFR 167.85). The regulations state that establishment registrations will be subject to termination if an annual report is not submitted (40 CFR 167.20(f)).

Notwithstanding the requirements identified above, no annual production reports were received from the establishments identified in this document in either 1996 or 1997. In addition, during the week of December 9–13, 1996, pesticide production reporting forms were mailed by first class mail to each parent company having responsibility for active pesticide producing establishments, including the companies identified in this document. The mailings sent to the last reported address of the companies identified in this document were returned unopened to the Agency, with indications of ''undeliverable'' or ''address unknown'' as the reason for the return. Subsequent attempts to locate a number of the identified companies and establishments were unsuccessful. The Agency is therefore hereby terminating, without further notice, the registrations of the identified establishments pursuant to 40 CFR 167.20(f) for failure to submit the annual reports in 1996 and 1997.

Following termination of each domestic pesticide producing establishment's registration, sale or distribution in the United States of any pesticide product produced in an establishment subsequent to the termination of that establishment's registration will be considered unlawful and a violation of section 12 of FIFRA, punishable by civil and criminal penalties. This document will not preclude the Agency from seeking other appropriate remedies necessary for compliance with FIFRA.

Following termination of each foreign pesticide producing establishment's registration, no pesticide product produced in that establishment may be imported into the United States.

ENVIRONMENTAL PROTECTION AGENCY LIST OF EPA REGIONAL OFFICES AND RESPONSIBLE CONTACTS

EPA regional office	States
U.S. EPA, Region I, Pesticides Section (SEA), J.F. Kennedy Federal Building, Boston, MA 02203–2211, ATTN: Lee Weller, Telephone: 617–565–9055.	CT, MA, ME, NH, RI, VT.
U.S. EPA, Region II, Pesticides Section (MS–240), 2890 Woodbridge Avenue, Building 209, BAYD, Edison, NJ 08337–3679, ATTN: Mary Garnett, Telephone: 732–321–6691.	NJ, NY, PR, VI.

ENVIRONMENTAL PROTECTION AGENCY LIST OF EPA REGIONAL OFFICES AND RESPONSIBLE CONTACTS—Continued

EPA regional office	States
U.S. EPA, Region III, Pesticides Section (3AT11), 841 Chestnut Building, Philadelphia, PA 19107–4431, ATTN: Lisa Donahue, Telephone: 215–566–2062.	DE, DC, MD, PA, VA, WV.
U.S. EPA, Region IV, AFC Pesticides Section (P&TSB), 61 Forsyth Street, SW, Atlanta, GA 30303–3104, ATTN: Jacqueline Wilkerson, Telephone: 404–562–9011.	AL, FL, GA, KY, MS, NC, SC, TN.
U.S. EPA, Region V, Pesticides & Toxics, Enforcement Section (DRT–14J), 77 West Jackson Blvd., Chicago, IL 60604–3590, ATTN: Pamela Grace, Telephone: 312–353–2833.	IL, IN, MI, MN, OH, WI.
U.S. EPA, Region VI, Pesticides Section (6PD–P), 1445 Ross Avenue, Dallas, TX 75202–2733, ATTN: James Redd, Telephone: 214–665–7560.	AR, LA, NM, OK, TX.
U.S. EPA, Region VII, Pesticides Branch (WWPD/PEST), 726 Minnesota Avenue, Kansas City, KS 66101, ATTN: Sandra Morrison, Telephone: 913–551–7614.	IA, KS, MO, NE.
U.S. EPA, Region VIII, Pesticides Section (ENF–PT), One Denver Place, Suite 500, 999 18th Street, Denver, CO 80202–2466, ATTN: Cornelia Maes, Telephone: 303–312–6049.	CO, MT, ND, SD, UT, WY.
U.S. EPA, Region IX, Pesticides Section (CMD–4–3), 75 Hawthorne Street, San Francisco, CA 94105, ATTN: Glenda Dugan, Telephone: 415–744–1066.	AZ, CA, HI, NV, AS, GU.
U.S. EPA, Region X, Pesticides Section (ECO–084), 1200 Sixth Avenue, Seattle, WA 98101, ATTN: Rella Abernathy, Telephone: 206–553–1970.	AK, ID, OR, WA.

EPA Office and Responsible Contact for All Foreign Pesticide Producing Establishments

United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture and Ecosystems Division (2225A), 401 M Street, SW., Washington, DC 20460 USA, ATTN: Foreign Establishment Report Data Technician, Telephone: 202–564–5008, Fax: 202–564–0085, e-mail: buckingham.carol@epamail.epa.gov

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
EPA Region I	
Water Consultants Corporation, 10 Rugby Street, Stamford CT 06904 ..	054312–CT–001, Water Consultants Corporation, 10 Rugby Street, Stamford CT 06904.
Advantage-1000, Alexander Enterprises, P.O. Box 876, Frostproof FL 33843.	057445–CT–001, Advantage-1000, 575 Broad Street, Bridgeport CT 06601.
Rachel Systems, Inc., P.O. Box 8538, New Haven CT 06531	064620–CT–001, Rachel Systems, Inc., 1172 E. Main Street, Bridgeport CT 06608.
Lo Tox Products Intl., Inc., P.O. Box 309, Riverdale NY 10471	0065445–CT–001, Lo Tox Products Intl., Inc., 955 Connecticut Avenue, Bridgeport CT 06607.
W.F. Young, Inc., 111 Lyman Street, Springfield MA 01101	001543–MA–001, W.F. Young, Inc., 111 Lyman Street, Springfield MA 01101.
Repel'M Distributors, Inc., 495 Post Road East, Westport CT 06880	048904–MA–001, Packaging Services, Inc., 168 Elm Street, Agawam MA 01001.
Pest Management Supply, Inc., 311 River Drive, Hadley MA 01035	064618–MA–001, Pest Management Supply, Inc., 311 River Drive, Hadley MA 01035.
Sidmar Enterprises, Inc., The Veritas Co, 2 Kleen Way, Holbrook MA 02343.	006831-MA–001, Sidmar Enterprises, The Veritas Co, 2 Kleen Way, Holbrook MA 02343.
Lamont Labs, Inc., Grenier Field, Londonderry NH 03053	011762–NH–001, Lamont Labs, Inc., Grenier Field, Londonderry NH 03053.
Horizons Unimited, 2314 Columbia Circle, Merrimack NH 03054	065388–NH–001, Horizons Unimited, 2314 Columbia Circle, Merrimack NH 03054.
Dytex Chemical Co., Inc., 1280 High Street, Central Falls RI 02863	036394–RI–001, Dytex Chemical Co., Inc., 1280 High Street, Central Falls RI 02863.
Anderson Consulting Services, 21 King Street, Burlington VT 05401	065870–VT–001, Anderson Consulting Services, 21 King Street, Burlington VT 05401.
EPA Region II	
Seacoast Laboratories, Inc., Old Georges Road, P.O. Box 373, Dayton NJ 08810.	001159–NJ–001, Seacoast Laboratories, Inc., Old Georges Road, Dayton NJ 08810.
Unette Corp., 26 Eastmans Road, Parsippany NJ 07054	064053–NJ–001, Unette Corp., 26 Eastmans Road, Parsippany NJ 07054.
EPA Region III	
C.M. Athey Paint Company, 1809 Bayard Street, Baltimore MD 21230	004794–MD–001, C.M. Athey Paint Company, 1809 Bayard Street, Baltimore MD 21230.
Salt Service and Chemicals, Inc., 601 Chester Pike, Crum Lynne PA 19022.	014014–PA–001, Salt Service and Chemicals, Inc., 601 Chester Pike, Crum Lynne PA 19022.
Universal Manufacturing & Distributing Co., 461 New Grove Street, Wilkes Barre PA 18702.	067875–PA–001, Universal Manufacturing & Distributing Co., 461 New Grove Street, Wilkes Barre PA 18702.
Allcon, Incorporated, 2250 Charles City Road, Richmond VA 23231	063781–VA–001, Allcon, Incorporated, 2250 Charles City Road, Richmond VA 23231.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Plas-Chem Coatings Company, Inc., P.O. Box 7846, Portmouth VA 23707.	064920–VA–001, Plas-Chem Coatings Company, Inc., 3560 Elm Avenue, Portmouth VA 23704.
Lim Laboratories, Inc., 3001 W Moore Street, Richmond VA 23230	066296–VA–001, Lim Laboratories, Inc., 3001 W Moore Street, Richmond VA 23230.
EPA Region IV	
Siegel Enterprises Inc., DBA AAA Pool Patio, 8100 Park Boulevard, Suite 601, Pinellas Park FL 34665.	044972–FL–001, Siegel Enterprises Inc., DBA AAA Pool Patio, 8100 Park Boulevard, Suite 601, Pinellas Park FL 34665.
A-Best Pool & Spa, Inc., 3535 SE Maricamp Road, #800, Ocala FL 32671.	052722–FL–001, A-Best Pool & Spa, Inc., 3535 SE Maricamp Road, #800, Ocala FL 32671.
Muskie Pools, Inc., 10341 S Highway 441, Belleview FL 33420	054270–FL–001, Muskie Pools, Inc., 10341 S Highway 441, Belleview FL 33420.
Sparkling H2O System, 10273 SW 186th Avenue, Dunnellon FL 34432	054646–FL–001, Sparkling H2O System, 10273 SW 186th Avenue, Dunnellon FL 34432.
Port St. Lucie Wholesale, Pool Chem. Outlet, 1654 SE Walton Road, Port St. Lucie FL 33452.	055853–FL–001, Port St. Lucie Wholesale, Pool Chem. Outlet, 1654 SE Walton Road, Port St. Lucie FL 33452.
Pool Specialists, Inc., 7604 Cortez Road West, Bradenton FL 34210	055997–FL–001, Pool Specialists, Inc., 7604 Cortez Road West, Bradenton FL 34210.
H. Lehman Enterprises, DBA Cool Pool, 1100–62nd Avenue North Street, St. Petersburg FL 33702.	056463–FL–001, Cool Pool, 1100–62nd Avenue North Street, St. Petersburg FL 33702.
Ft Caroline Pool Supply, 5566 Fort Caroline Road, Jacksonville FL 32211.	057404–FL–001, Ft Caroline Pool Supply, 5566 Fort Caroline Road, Jacksonville FL 32211.
Golden Isles Construction Co., Inc., 1525 N Ohio Street, Live Oak FL 32060.	061689–FL–001, Golden Isles Construction Co., Inc., 1525 N Ohio Street, Live Oak FL 32060.
S.O.S. Pool Depot, P.O. Box 1042, Palm Harbor FL 34682	062134–FL–001, S.O.S. Pool Depot, 2112–A Sunnydale Boulevard, #21 & 23, Clearwater FL 34625.
Designer Pools-Pool Supply, Inc., P.O. Box 521870, Longwood FL 32752.	062608–FL–001, Designer Pools-Pool Supply, Inc., 3653 Lake Emma Road, Lake Mary FL 32746.
Clearwater Concepts, Inc., 5239 S. Dale Mabry, Tampa Fl 33611	063327–FL–001, Clearwater Concepts, Inc., 5239 S. Dale Mabry, Tampa Fl 33611.
Maintenance Depot, Inc., 1295 SW 4th Avenue, Delray Beach FL 33444.	063617–FL–001, Maintenance Depot, Inc., 1295 SW 4th Avenue, Delray Beach FL 33444.
Southern Pools, 2055 NE 140th Street, North Miami Beach Fl 33181 ...	063808–FL–001, Southern Pools, 2055 NE 140th Street, North Miami Beach FL 33181.
North Florida Farm & Home Center, Rt. 1 Box 63A, Jennings FL 32053	064206–FL–001, North Florida Farm & Home Center, Rt. 1 Box 63A, Jennings FL 32053.
Midgley's Hardware, Inc., 14185 Beach Boulevard, Jacksonville FL 32250.	064799–FL–001, Midgley's Do It Center, 14185 Beach Boulevard, Jacksonville FL 32250.
Mainstream Industries, Inc., 2765 Business Center Boulevard, Melborne FL 32940.	064801–FL–002, Mainstream Industries, Inc., 2765 Business Center Boulevard, Melborne FL 32940.
Wharco Ace Hardware, 13349 N Main Street, Jacksonville FL 32218 ...	064805–FL–001, Wharco Ace Hardware, 13349 N Main Street, Jacksonville FL 32218.
Norland Hardware, Inc., 651 NW 183rd Street, Miami FL 33169	065256–FL–001, Norland Hardware, Inc., 651 NW 183rd Street, Miami FL 33169.
Greensource, Inc., 5910 Benjamin Center Drive, Suite 110, Tampa FL 33634.	065472–FL–001, Greensource, Inc., 5910 Benjamin Center Drive, Suite 110, Tampa FL 33634.
B-J Marketers & Associates, 504 West Plantation Boulevard, Lake Mary FL 32746.	065598–FL–001, B-J Marketers & Associates, 504 West Plantation Boulevard, Lake Mary FL 32746.
Geotechnical, Inc., 2256 Fellowship Road, Suite 204, Tucker GA 30084	065900–FL–001, Geotechnical, Inc., Route 2 Box 54, Bristol FL 32321.
Poolside Supplies, 106 Thomas Drive, Panama City Beach FL 32408 ..	065951–FL–001, Poolside Supplies, 106 Thomas Drive, Panama City Beach FL 32408.
Discount Pool Supplies, Tarpon Center, Unit E, 4880 Placida Road, Englewood FL 34224.	065953–FL–001, Discount Pool Supplies, Tarpon Center, Unit E, 4880 Placida Road, Englewood FL 34224.
Pool Pal, Inc., P.O. Box 1141, Daytona Beach FL 32115	066393–FL–001, Pool Pal, Inc., 110 Jean Street, Daytona FL 32114.
Discount Pool Maintainance, 2518 NW 2nd Avenue, Boca Raton FL 33432.	066402–FL–001, Discount Pool Maintainance, 2518 NW 2nd Avenue, Boca Raton FL 33432.
Fhone Safe Marketing, Inc., 2765 Business Center Boulevard, Melbourne FL 32940.	066506–FL–001, Fhone Safe Marketing, Inc., 2765 Business Center Boulevard, Melbourne FL 32940.
Pool Concepts, Inc., 5512 Silver Oak Drive, Ft. Pierce FL 33457	067105–FL–001, Pool Concepts, Inc., 1532 SE Village Green Drive, Port St. Lucie FL 33457.
Yulee Pools, P.O. Box 517, Yulee FL 32097	067261–FL–001, Yulee Pools, A1A Highway Nassua Plaza, Yulee FL 32097.
All About Pools, Inc., 3535 SE Maricamp Road, #800, Ocala FL 34471	067448–FL–001, All About Pools, Inc., 3535 SE Maricamp Road, #800, Ocala FL 34471.
Byotron Technical Limited, 6041 Siesta Lane, Port Richey FL 34668	067518–FL–001, Byotron Technical Limited, 6041 Siesta Lane, Port Richey FL 34668.
Universal Services/Safe & Sure Products, 2705 S. Oakland Forest Drive, Suite 202, Oakland Park FL 33309.	067538–FL–002, J&S Chemicals, Inc., 705 Sammonds Road, Plant City FL 33567.
Pool Depot By Jim Jensen, 10534 Wiles Road, Coral Springs FL 33067	067940–FL–001, Pool Depot By Jim Jensen, 10534 Wiles Road, Coral Springs FL 33067.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Surfside Spas & Recreation, Inc., 2316 S Atlantic Avenue, Daytona Beach Shores FL 32118.	068475–FL–001, Surfside Spas & Recreation, Inc., 2316 S Atlantic Avenue, Daytona Beach Shores FL 32118.
BBK Mfg., Inc., 3384 Mercantile Avenue, Unit G, Naples FL 33942	069160–FL–001, BBK Mfg., Inc., 3384 Mercantile Avenue, Unit G, Naples FL 33942.
Amerisystems, Inc., 1734 Avenida Del Sol, Boca Raton FL 33432	069450–FL–001, Amerisystems, Inc., 1734 Avenida Del Sol, Boca Raton FL 33432.
Lester Laboratories 2370 Lawrence Street, Atlanta GA 30344	000337–GA–001, Lester Laboratories 2370 Lawrence Street, Atlanta GA 30344.
Morris–Bancroft Paper Co., Inc., 408 Community Road, Brunswick GA 31520.	036709–GA–001, Morris-Bancroft Paper Co., Inc., 408 Community Road, Brunswick GA 31520.
Rich Health, P.O. Box 18258, Irvine CA 92713	043576–GA–001, Gimborn U.S. (DBA Gimborn Rich Health), 4280 Northeast Expressway, Atlanta GA 30340.
Metro Pool Chemical of Atlanta 5994 Goshen Springs, Norcross GA 30071.	062330–GA–001, Metro Pool Chemical of Atlanta 5994 Goshen Springs, Norcross GA 30071.
Thermodyne, Inc., 2370 Lawerence Street, Atlanta GA 30344	065309–GA–001, Thermodyne, Inc., 2370 Lawerence Street, Atlanta GA 30344.
Trap Technologies, Inc., 112 S Main Street, Jonesboro GA 30236	066993–GA–001, R. J. Machinery, Inc., 3790 Browns Mill Road, SE, Atlanta GA 30354.
United Chemical, Inc., 5578–A Export Boulevard, Garden City GA 31408.	067275–GA–001, United Chemical, Inc., 5578–A Export Boulevard, Garden City GA 31408.
Valdosta Chemical & Paper, P.O. Box 1081, Valdosta GA 31603	067459–GA–001, Valdosta Chemical & Paper 1000 N Patterson, Valdosta GA 31602.
Bunton Seed Company 939 E Jefferson Street, Louisville KY 40206	004683–KY–001755, Bunton Seed Company 939 E Jefferson Street, Louisville KY 40206.
FOD IND, Inc., DBA–MSC Technologies, P.O. Box 34203, Louisville KY 40232.	068713–KY–001, FOD IND, Inc., 4102 Bishop Lane, Louisville KY 40218.
Allied Signal, Inc., Tar Products, P.O. Box 593, Fairfield AL 35064	000218–MS–001, Allied Signal, Inc., Caveham 2219 Cresote Road, Gulfport MS 39501.
Frontier Laboratories, Inc., 1420 Cynthia Road, Clinton MS 39056	057100–MS–001, Frontier Laboratories, Inc., 1420 Cynthia Road, Clinton MS 39056.
Silver Sprink, Inc., P O Box 1353, Greenville NC 27834	051070–NC–001, Silver Sprink, Inc., 205 Commerce Street, Suite C, Greenville NC 27834.
Chem Designs, PO Box 1420, Hwy NC 151, Candler NC 28715	056210–NC–001, Diversified Labs, Inc., PO Box 1420, Hwy NC 151, Candler NC 28715.
PSC Associates, Inc., 401 Dean Street, Winston Salem NC 27101	065129–NC–001, PSC Associates, Inc., 401 Dean Street, Winston Salem NC 27101.
Pinex, Inc., PO Box 246, Simpsonville SC 29681	066906–SC–001, Pinex, Inc., 1 Main Street, Piedmont SC 29673.
Maintenance Products, Inc., P.O. Box 750306, Memphis TN 38175	007389–TN–001, Maintenance Products, Inc., 5744 Shelby Drive, Memphis TN 38115.
Morgan International Products, Inc., 519 W Webb Road, Eagleville TN 37060.	056750–TN–001, 519 W Webb Road, Eagleville TN 37060.
Eco-Tech, Inc., 4170 Getwell Road, Memphis TN 38118	067133–TN–001, Eco-Tech, Inc., 4170 Getwell Road, Memphis TN 38118.
EPA Region V	
Good-Way Insecticide, Inc., P.O. Box 276, Wheeling IL 60090	002006–IL–001, Good-Way Insecticide, Inc., 3425 W Dempster, Skokie IL 60076.
Twinoak Products, Inc., 12127B Galena Road, Plano IL 60545	010876–IL–001, Twinoak Products, Inc., 12127B Galena Road, Plano IL 60545.
J–B Exterminating Service, 2036 East 79th Street, Chicago IL 60649 ...	032984–IL–001, J–B Exterminating Service, 2036 East 79th Street, Chicago IL 60649.
Kaye Contract Packaging, 340 East 138th Street, Chicago IL 60627	033596–IL–001, Kaye Contract Packaging, 340 East 138th Street, Chicago IL 60627.
Kaye Contract Packaging, 340 East 138th Street, Chicago IL 60627	033596–IL–004, Kaye Contract Packaging, 344 East 136th Place, Chicago IL 60627.
Friendly Oaks Garden Center, 5501 W 159th Street, Oak Forest IL 60452.	040930–IL–001, Friendly Oaks Garden Center, 5501 W 159th Street, Oak Forest IL 60452.
Dewill, Inc., 766–768 Industrial Drive, Elmhurst IL 60126	041981–IL–001, Dewill, Inc., 766–768 Industrial Drive, Elmhurst IL 60126.
Nu-Way Products, 5927 S Western Avenue, Chicago IL 60636	044405–IL–001, Nu-Way Products, 5927 S Western Avenue, Chicago IL 60636.
Gift Cosmetics, Inc., 1690 Fabyan Parkway, Batavia IL 60510	045713–IL–001, Gift Cosmetics, Inc., 1690 Fabyan Parkway, Batavia IL 60510.
RMR, Inc., 1240 Harrison Avenue, Rockford IL 61108	047897–IL–001, RMR, Inc., 1240 Harrison Avenue, Rockford IL 61108.
Paumer, Inc., P.O. Box 462, Effingham IL 62401	048738–IL–001, Paumer, Inc., RR2 Box 1404, Effingham IL 62401.
RHO Chemical Co., Inc., 320 N. Michigan Avenue, Chicago IL 60601 ..	053348–IL–001, RHO Chemical Co., Inc., Industry Avenue, Joliet IL 60434.
Sullivan Brothers Fertilizer & Chemical, 1332 E Adams Street, Macomb IL 61455.	055677–IL–001, Sullivan Brothers Fertilizer & Chemical, East Side of Route 13, Adair IL 61411.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Sullivan Brothers Fertilizer & Chemical, 1332 E Adams Street, Macomb IL 61455.	055677–IL–002, Sullivan Brothers Fertilizer & Chemical, RR 3, Macomb IL 61455.
New Day Products, Inc., 2257 E 199th Street West, Lynwood IL 60411	057985–IL–001, New Day Products, Inc., 2251 E 199th Street West, Lynwood IL 60411.
General Organics, Inc., 2304 Festin Avenue, Wheeling IL	062768–IL–001, General Organics, Inc., 4041 W Ogden Avenue, Chicago IL 60623.
Stampede Inst. Corp., 3215 S 59th Avenue, Cicero IL 60650	063729–IL–001, Stampede Inst. Corp., 3215 S 59th Avenue, Cicero IL 60650.
Unique Pack, Inc., 14032 S Kostner, Crestwood IL 60445	064534–IL–001, Unique Pack, Inc., 14032 S Kostner, Crestwood IL 60445.
Hammond Technologies, Inc., P.O. Box 68310, Indianapolis IN 46268	048017–IN–001, Hammond Technologies, Inc., 4220 Saguaro Trail, Indianapolis IN 46268.
Mesa Chemical, Inc., P.O. Box 31197, Indianapolis IN 46231	065261–IN–001, Mesa Chemical, Inc., 2629 W Walnut Street, Indianapolis IN 46222.
Erin American Ltd., Fort Harrison Industrial Park, 3902 4th Parkway, Terre Haute IN 47804.	066697–IN–001, Erin American Ltd., Fort Harrison Industrial Park, 1320 Savannah Avenue or 3902 4th Parkway, Terre Haute IN 47804.
Korex Company, P.O. Box 175, Wixon MI 48096	034470–MI–001, Korex Company, 50000 W Pontiac Trail, Wixon MI 48096.
Davco Manufacturing Corp., P.O. Box 2327, Ann Arbor MI 48106	064455–MI–001, Davco Manufacturing Corp., 1600 Woodland Drive North, Saline MI 48176.
Autumn Environmental, 1321 Orleans #1109, Detroit MI 48207	065276–MI–001, Autumn Environmental, 1321 Orleans #1109, Detroit MI 48207.
Skogen Propagation Supply, 14109 Cleveland, Spring Lake MI 49456	068080–MI–001, Skogen Propagation Supply, 17367 Lake Michigan D, West Olive MI 49460.
Viking Laboratories, Inc., 78117 Elm Street, NE, Minneapolis MN 55432.	039395–MN–001, Viking Laboratories, Inc., 7905 Beech Street, NE, Minneapolis MN 55432.
Converter Tech, 137 S Robert Street, St. Paul MN 55107	063456–MN–001, Converter Tech, 137 S Robert Street, St. Paul MN 55107.
Water & Air Purification Corp., 300 S Owasso Boulevard, St. Paul MN 55117.	067626–MN–002, Bowman Industrial, 5th Street, Kennedy MN 56733.
Spectrum Pharmaceuticals, P.O. Box 6271, Minneapolis MN 55406	068079–MN–001, Spectrum Pharmaceuticals, 4525 Hiawatha Avenue, Minneapolis MN 55406.
Henkel Corp., R. T. Betz, 11500 N Lake Drive, Cincinnati OH 45249	002302–OH–001, Henkel Corp., 5051 Estecreek Road, Cincinnati OH 45232.
Andrews Chemical Products, P.O. Box 32, Pataskala OH 43062	009163–OH–001, Andrews Chemical Products, Broad Street, SW 7889, Pataskala OH 43062.
American Water Science, 1741 Cleveland Avenue, Columbus OH 43211.	013604–OH–001, American Water Science, 1601 Woodland Avenue, Columbus OH 43219.
K & S Allpurpose Products, 499 Bonham Avenue, Columbus OH 43211	040565–OH–001, K & S Allpurpose Products, 499 Bonham Avenue, Columbus OH 43211.
Defiance Landmark, Inc., 632 Perry Street, Defiance OH 43512	055660–OH–002, Defiance Landmark, Inc., Farm Bureau Street, Sherwood OH 43556–0507.
Defiance Landmark, Inc., 632 Perry Street, Defiance OH 43512	055660–OH–003, Defiance Landmark, Inc., 501 Railroad Street, Hicksville OH 43526.
HJP, Inc., 121 W High Street, Lima OH 45801	061593–OH–001, HJP, Inc., 5205 W Hume/Home Road, Lima OH 45806.
Bugless, Inc., Box 161, Cleveland OH 44139	068476–OH–001, Bugless, Inc., 1223—A Norton Road, Hudson OH 44236.
Guth Corp., 551 Granville Avenue, Hillside IL 60162	011275–WI–001, Guth Corp., 7405 Sleepy Hollow, West Bend WI 53095.
Green-Rock FS Coop, 1619 14th Avenue, Monroe WI 53566	040677–WI–003, Green-Rock FS Coop, W664 Highway 81, Brodhead WI 53520.
Swimchem, Inc., 1702 Yout Street, Racine WI 53403	043521–WI–001, Swimchem, Inc., 1101 Mound Avenue, Racine WI 53406.
Brite Chemical Co., W220 N 1531 Jericho Court #E, Waukesha WI 53186.	047202–WI–001, Brite Chemical Co., W220 N 1531 Jericho Court #E, Waukesha WI 53186.
A–Z Farm Centers, 321 S Water Street, Watertown WI 53094	048015–WI–003, A to Z Farm Center, Inc., N9008 Cty Tke, Watertown WI 53094.
Merisco, Inc., 4811 W. Woolworth Avenue, Millwaukee WI 53218	067127–WI–001, Merisco, Inc., 5400 W Brown Deer Road, Brown Deer WI 53223.
Lee Hahn Fertilizer, Inc., 9701 E County Road X, Clinton WI 53525	069210–WI–001, Lee Hahn Fertilizer, Inc., 11029 E County Road X, Clinton WI 53525.
EPA Region VI	
Marks Supply Co., PO Box 0042, Gretna LA 70054	061851–LA–001, Marks Supply Co., 317 Grefer Lane, Harvey LA 70059.
Glinton Corp., 14 Inverness Drive E, Suite G–120, Englewood CO 80112.	068162–LA–001 Woolard, Inc., 5903 I 49 S Service Road, Opelousas LA 70570.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Lepo Custom Manufacturing, Inc., 5055 W Industrial, Midland TX 79703.	060000–TX–001 Lepo Custom Mfg., Inc., 4503 W Industrial, Midland TX 79703.
Classic Mfg., 5007 Martin Luther King Freeway, Fort Worth TX 76119 ..	066897–TX–001, Classic Mfg., 5007 Martin Luther King Freeway, Fort Worth TX 76119.
Region VII	
Rohpak Packaging & Assembly Co., RR 1, Box 341, West Liberty IA 52776.	054375–IA–001, Rohpak Packaging & Assembly Co., RR 1, Box 341, West Liberty IA 52776.
Coles Farm Store, 520 Maple, Chetopa KS 67336	062859–KS–001, Coles Farm Supply, Inc., Highway 59 North, Chetopa KS 67336.
CO–OP Inc, 101 Co-op Street, Kingsdown KS 67858	067288–KS–001, 101 Co-op Street, Kingsdown KS 67858.
Louisiana-Pacific Corp., 2001 Hitzert Court, Fenton MO 63026	064276–MD–001, Louisiana-Pacific Corp., 8679 Greenwood Place, Savage MD 20763
Blue Diamond Pool Service, Inc, 1344 Jeffco Boulevard, Arnold MO 63010.	047266–MO–001, Blue Diamond Pool Service, Inc, 1344 Jeffco Boulevard, Arnold MO 63010.
NP Industries, Inc., 5017 S 38th Street, St Louis MO 63116	058633–MO–001, NP Industries, Inc., 5017 S 38th Street, St Louis MO 63116.
D & R Farm Supply, RR 2 Box 9, Galt MO 64641	064790–MO–001, D & R Farm Supply, RR 2 Box 9, Galt MO 64641.
Circle 76 Fert., Inc., P.O. Box 370, Long Pine NE 69217	052729–NB–001, Coash, Inc., 256 W 1st, Long Pine NE 69217.
EPA Region VIII	
Gas Purification Systems, 700 W Mississippi, # C1, Denver CO 80223	054557–CO–001, Gas Purification Systems 700 W Mississippi, #C1, Denver CO 80223.
Virochem, 6660 Delmonico Drive, Suite D–180, Colorado Springs CO 80919.	066339–CO–001, Virochem 40 D Mountview Lane, Rockrimmon CO 80907.
Vestra Intl., Inc., 106 W 500 S #105, Bountiful UT 84010	068277–UT–001, Vestra Intl., Inc., 106 W 500 S #105, Bountiful UT 84010.
EPA Region IX	
Person-Hickrill Laboratories, 9004 N 56th Avenue, Glendale AZ 85302	002767–AZ–001, Person-Hickrill Laboratories, 9004 N 56th Avenue, Glendale AZ 85302.
Patterson Laboratories, Inc., 3505 W Grand River, Howell MI 48843	008740–AZ–001, Patterson Laboratories, Inc., 4940 W Jefferson Boulevard, Phoenix AZ 85043.
Action Chemical Company 1225 South 7th Street, Phoenix AZ 85034 ..	036022–AZ–001, Action Chemical Company, Inc., 1225 South 7th Street, Phoenix AZ 85034.
Halex, Inc., 14435 N Scottsdale Road, Scottsdale AZ 85254	049730–AZ–001, Halex, Inc., 14435 N Scottsdale Road, Scottsdale AZ 85254.
Alpha Chem 1897 N Acoma, Lake Havasu City AZ 86403	053146–AZ–001, Alpha Chem, 1570 Copper Lane, Lake Havasu City AZ 86403.
Gainor Mfg. Co., Inc., P.O. Box 50082, Phoenix AZ 85076	062092–AZ–001, Gainor Mfg. Co., Inc., 116 N Roosevelt, #131, Chandler AZ 85226–3411.
Moyer Chemical, P.O. Box 54340, Fresno CA 93755	005967–CA–001, Moyer Products, Inc., 5427 East Central Avenue, Fresno CA 93725.
Moyer Chemical, P.O. Box 54340, Fresno CA 93755	005967–CA–003, Moyer Products, Inc., 206 Salinas Road, Watsonville CA 95076.
Moyer Chemical, P.O. Box 54340, Fresno CA 93755	005967–CA–004, Moyer Chemical Company, 2652 Big Valley Road, Lakeport CA 95453.
Moyer Chemical, P.O. Box 54340, Fresno CA 93755	005967–CA–006, Moyer Products, Inc., 2375 Clark Road, El Centro CA 92244.
Moyer Chemical, P. O. Box 54340, Fresno CA 93755	005967–CA–007, Moyer Products, Inc., 5741 East Central Avenue, Fesno CA 93725.
California Veterinarian Research Lab, 1836 E Walnut Avenue, Pasadena CA 91107.	008334–CA–001, California Veterinarian Research Lab, 595 E Colorado Boulevard, Pasadena CA 91101.
J. B. Sebrell Company, 365 Central Avenue, Los Angeles CA 90013	008454–CA–001, J. B. Sebrell Company, 365 Central Avenue, Los Angeles CA 90013.
Willard Products Division, P.O. Box 249, Redwood City CA 94064	009639–CA–001, Willard Products, 70 Chemical Way, Redwood City CA 94063.
M E Parks Enterprises, Inc., P.O. Box 802, Fallbrook CA 92028	013765–CA–001, M E Parks Enterprises, Inc., 230 S Stagecoach Lane, Fallbrook CA 92028.
Aerosol West, P.O. Box 5103, Ventura CA 93005	035988–CA–001, Aerosol West 2595 Katherine Avenue, Ventura CA 93003.
Pro-Tec Chemical Co., 1555 Burke Avenue, San Francisco CA 94124	038512–CA–001, Pro-Tec Chemical Co., 1463 Davidson Avenue, San Francisco CA 94124.
Cordova Laboratories, 13177 Foothill Boulevard, Sylmar CA 91342	038798–CA–001, Cordova Laboratories, 13177 Foothill Boulevard, Sylmar CA 91342.
Bye Fly Company, 819 Summerhill Court, Encinitas CA 92024	039552–CA–001, Bye Fly Company, 3516 Calle Gavanzo, Carlsbad CA 92009.
Waterworth, 1900 Pulman Lane, Redondo Beach CA 92078	043099–CA–001, Waterworth, 15223 Grevillea, Lawndale CA 90260.
Ultra Dynamics Corporation, 1631 10th Street, Santa Monica CA 90404	045519–CA–001, Ultra Dynamics Corporation, 16559 Saticoy Street, Van Nuys CA 91406–1739.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Trevor Chemicals & Engineering, 1565–A, Scenic Avenue, Costa Mesa CA 92626.	045779–CA–001, Trevor Chemicals & Engineering, 1048 Irvine Avenue #462, New Port Beach CA 92660.
Pure Sure, 21339 Nordhoff Street, Chatsworth CA 91311	046869–CA–001, Pure Sure, 9200 Deering Avenue, Chatsworth CA 91311.
Beneficial BioSystems, Inc., P.O. Box 8461, Emeryville CA 94662	047083–CA–001, Beneficial BioSystems, Inc., 1129 32nd Street, Oakland CA 94608.
Super Chem Corp., 4095 Leaverton Court, Anaheim CA 92651	048720–CA–001, Super Chem Corp., 4095 Leaverton Court, Anaheim CA 92651.
D & F Control Systems, Inc., 3401 Crow Canyon Road, Suite 110, San Ramon CA 94583.	049840–CA–001, D & F Control Systems, Inc., 3401 Crow Canyon Road, Suite 110, San Ramon CA 94583.
Loomis National Marketing, Inc., P.O. Box 258, North Hollywood CA 91601.	050589–CA–001, Loomis National Marketing, Inc., 1128 Olympic Drive, Corona CA 91719.
Guard-Rite, 5216 Chakemco Street, Southgate CA 90280–6645	051014–CA–001, Guard-Rite, 5216 Chakemco Street, Southgate CA 90280–6645.
Johnson Chemsource, Inc., 16057–61 W Foothill Boulevard, Irwindale CA 91702.	056156–CA–001, Johnson Chemsource, Inc., 16057–61 W Foothill Boulevard, Irwindale CA 91702.
Bi-Pro Industries, Inc., P.O. Box 998 845, El Segundo CA 90245	057075–CA–001, Bi-Pro Industries, Inc., 1507 N Boundy Drive, Los Angeles CA 90049.
Phaeton Corp., 17910 La Salle Avenue, Gardena CA 90248	057122–CA–001, Phaeton Corp., 17910 La Salle Avenue, Gardena CA 90248.
Townsend Chemical, Inc., 42028 Osgood Road, Fremont CA 94539	059172–CA–001, Aqua Chlor, 42028 Osgood Road, Fremont CA 94539.
Townsend Chemical, Inc., 42028 Osgood Road, Fremont CA 94539	059172–CA–003, Aqua Chlor, 455 Coleman Avenue, San Jose CA 95110.
Townsend Chemical, Inc., 42028 Osgood Road, Fremont CA 94539	059172–CA–004, Aqua Chlor, 22586 S Moffat Road, Ripon CA 95366.
Townsend Chemical, Inc., 42028 Osgood Road, Fremont CA 94539	059172–CA–005, Aqua Chlor, Altamont Pass Road, Traly CA 95376.
Exhart Company, 9851 Owensmouth Avenue, Chatsworth CA 91311 ...	060045–CA–001, Exhart Company, 6758 Eton Avenue, Canoga Park CA 91305.
Reflect, Inc., 3100 Kerner Boulevard, San Rafael CA 94901	062337–CA–001, Reflect, Inc., 3100 Kerner Boulevard, San Rafael CA 94901.
Technozone (Ozone Technology), 239 Poppy Avenue, Corona Del Mar CA 92625.	063752–CA–001, Technozone, 4606 Roxbury Road, Corona Del Mar CA 92625–3021.
Nature's Choice, 17709 Crabb Lane, Huntington Beach CA 92647	63897–CA–001, Nature's Choice, 17709 Crabb Lane, Huntington Beach CA 92647.
Yellowjacket Extermination Specialist, 624 Villanova Drive, Davis CA 95616.	064200–CA–001, Yellowjacket Extermination Specialist, 624 Villanova Drive, Davis CA 95616.
R & R Cosmetics, Inc., 15131 Nelson Avenue, # A, La Puente CA 91744–4334.	064399–CA–001, R & R Cosmetics, Inc., 17749 E Valley Boulevard, City of Industry CA 91744.
Professional Energizing Products, 72–096 Dunham Way, Suite E, Thousand Palms CA 92276.	065259–CA–001,Professional Energizing Products, 72–096 Dunham Way, Suite E, Thousand Palms CA 92276.
Roach Rid, Inc., 9528–35 Miramar Road, San Diego CA 92126–4533 ..	065505–CA–001, Roach Rid, Inc., 9528–35 Miramar Road, San Diego CA 92126–4533.
Capitol Packaging, Inc., 11287 Sunrise Park Drive, Rancho Cordova CA 95742.	065634–CA–001, Capitol Packaging, Inc., 11287 Sunrise Park Drive, Rancho Cordova CA 95742.
Leo's Products, Inc.. 4156 E Pacific Way. Los Angeles CA 90023	066681–CA–001, Leo's Products, Inc., 4156 E. Pacific Way, Los Angeles CA 90023.
Triox, 6918 Sierra Court, Dublin CA 94568	066769–CA–001,Triox, 6918 Sierra Court, Dublin CA 94568.
Villapark Electronics, USA, 1612 N Spurgeon Street, Santa Ana CA 92701.	068052–CA–001, Villapark Electronics, USA, 1612 N Spurgeon Street, Santa Ana CA 92701.
Associated Products, 1180 E 9th Street, B–3, San Bernardino CA 92410..	068507–CA–001, Associated Products, 1180 E 9th Street, B–3, San Bernardino CA 92410
Bondtite-Hawaii, Inc., 740 Ahua Street, Honolulu HI 96819	059269–HI–001, Bondtite-Hawaii, Inc., 740 Ahua Street, Honolulu HI 96819.
Total Systems, Inc., 3049 Rigel Avenue, Las Vegas NV 89102	041307–NV–001, Total Systems, Inc., 3049 Rigel Avenue, Las Vegas NV 89102.
EPA Region X (NO LISTINGS)	

Foreign company name and mailing address	Foreign pesticide producing establishment number, name, and site address
Ascona SA, C/O American Cyanamid, 697 Route 46, Clifton NJ 07015	062389–AG–001, Ascona S.A., 3200 Concordia, Sarmiento 735, Buenos Aires Argentina.
Protex S.A., Vaartdijk 40, Antwerpen (Deurne), Belgium	017028BL–001, Protex S.A., Vaartdijk 40, Antwerpen (Deurne), Belgium.
Shell Brasil (Petroleo) QA. 21, AV. Pres. Juscelino Kubitschek 1830, SAO Paulo 94543, Brazil.	048386–BR–001, Shell Brasil (Petroleo) QA. 21, AV. Pres Juscelino Kubitschek 1830, Sao Paulo 04543, Brazil.
Alex Milne Associates Ltd., 376 Orenda Rd. E., Brampton, Ontario, Canada L6T1G1.	052614–CN–001, Alex Milne Associates Ltd., 376 Orenda Road, East, Brampton, Ontario, Canada L6T1G1.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name, and site address
Ozonex International Technology Corp., 1050 Salk Road, Pickering, Ontario, Canada.	066608–CN–001, Ozonex International Technology Corp., 1050 Salk Road, Pickering, Ontario, Canada.
Bionaire, Inc., Bionaire Corporation 90 Boroline Road, Allendale NJ 07401.	066740–CN–001, Bionaire, Inc., 2000 32nd. Avenue, Lachine, Quebec, Canada.
Minera La Florida, Miarador Azul 224, Santiago Chl, Pasaje Mendez 589, Copiapo, Chile.	057743–CH–001, Minera La Florida, Miarador Azul 224, Santiago, Chile.
March Chemicals Co. Ltd., 18A Qing Feng Xin Cun, Hangzhou-Zhejiang 3L0013, Japan 310013000.	068459–CHN–001, Qianjiang Biochemistry Co. Ltd., South of Xiashi Town Haining, Zhejiang, China.
NEDI 12 Rue Du Port De La Celle, Saint Mammes 77670, France	065493–FR–001, NEDI 12 Rue Du Port De La Celle, Saint Mammes 77670, France.
Waterlife Res., C/O R. Herdegan, Repres., 3839 Oakhills, Birmingham MI 48010.	058211–EN–001, Waterlife Res., 476, Bath Rd. Longford, W. Drayton Mx UB7OED, Great Britian.
Nihon Dennetsu Co. Ltd., 1–1, 1–Chome, Omori-Nishi, Ota-Ku, Tokyo, Japan.	046050–JP–001, Nihon Dennetsu Co.—Matsukawa Plant, 5268 Morishige Aza, Matsukawa-Mura, Kita Azumi-Gun, Naga, Japan.
March Chemicals Co. Ltd., 18A Qing Feng Xin Cun, Hangzhou-Zhejiang 3L0013, Japan 310013000.	068459–JPN–001, March Chemicals Co. Ltd., 18A Qing Feng Xin Cun, Hangzhou–Zhejiang 3L0013, Japan 310013000.
Protexa, S.A., C/O Gatill Corp, 601 N. Shepherd Suite 340, Houston TX 77007.	050676–MX–001, Protexa, S.A., Apdo 1141, Monterrey, Nuevo Leon, Mexico.
Agroquimicas EQ, C/O Bruce Knoblock, 11741 E Tanque, Tuszon AZ 85749.	054675–MX–001, Agroquimicas Y Equipos Sa De Cv, Av. Jose Escandon Y Helguera Cruz N 5, H. Matamoros, Tam, Mexico.
Tacna International, Inc., 1465—30th Street, Suite C, San Diego, CA 92154.	062939–MX–001, Tacna International, Inc., Romano No. 304–F, La Mesa BC Tijuana, Mexico.
Crystalene (FE), C/O Eviro–San 22 River Street, Braintree MA 02184–3235.	058920–SI–001, Crystalene (FE) Water Treatment Pte., Ltd., 27 Tuas Avenue, 13 # 01–20, Singapore 2263 Singapore.
Norbrook America, Inc., 20510 Earlgate Street, Walnut CA 91789	018030–IR–001, Norbrook Laboratories Ltd., Rossmore Industries Estate, Monaghan Ireland.

Authority: 7 U.S.C. 136

List of Subjects

Environmental Protection, Pesticides, Pesticide Company, Pesticide Producing Establishment, Pesticide Producing Establishment Registration, FIFRA section 7, Reporting and Recordkeeping requirements, Devices, and Production Reports.

Dated: September 10, 1997.

David Dull,

Acting Director, Agriculture and Ecosystems Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–24550 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5892–8]

Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and simultaneously requesting comment on the draft guidance document ''Site-Specific Flexibility Requests for Municipal Solid Waste landfills in Indian Country''. This draft guidance provides owners and operators of municipal solid waste landfills (MSWLFs) in Indian Country with options for meeting the EPA regulations found in 40 CFR part 258 which establish federal requirements for MSWLFs. States with EPA approved permit programs have the authority to allow MSWLF owners and operators to use flexible approaches to meet the MSWLF performance requirements, provided these alternative approaches protect human health and the environment. The process described in this draft guidance document provides that identical opportunity to owners and operators in Indian Country.

This guidance is intended to assist owners and operators of MSWLFs in Indian Country to develop and submit site-specific requests for flexibility in meeting 40 CFR part 258 criteria. Site-specific flexibility can allow owners and operators in Indian Country cost-effective methods of complying with federal performance standards while ensuring that human health and the environment are protected. The proposed site specific rulemaking process ensures protection of human health and the environment while decreasing regulatory burden to tribal governments and owners and operators of MSWLFs in Indian Country.

The primary audiences for the draft guidance are tribal governments and owners and operators of MSWLFs in Indian Country. This guidance is available for immediate use, and simultaneously open for comments.

DATES: EPA will accept comments on ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country'' until November 30, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–97–SSSA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–SSSA–FFFFF. All electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review

docket materials, the Agency recommends that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accession paper and/or electronic copies of the document, see the ''Supplementary Information'' section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703 412–9810 or TDD 703 412–3323. For information on specific aspects of the document, contact Karen Rudek, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW, Washington DC 20460; phone 703 308–1682; e-mail rudek.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For a paper copy of the draft document, ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country'', please contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–3323. The document number is EPA530–R–97–016.

The draft guidance is also available in electronic format on the Internet. Follow these instructions to access it:

WWW: http://www.epa.gov/epaoswer/nonhazardous waste

FTP: ftp.epa/gov

Login: anonymous

Password: your internet address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''Addresses'' section above.

EPA responses to comments, whether the comments are written or electronic, will be contained in a notice in the Federal Register or in a response to comments document placed in the official record for this Notice of Document Availability. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

EPA has authority under the Resource Conservation and Recovery Act (RCRA) sections 2002, 4004, and 4010 to promulgate site-specific rules as outlined in this draft guidance document. The steps outlined in this guidance document for promulgating site-specific rules are meant to satisfy the notice and opportunity for comment requirements of the Administrative Procedures Act, 5 U.S.C. 551.

Dated: September 4, 1997.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–24551 Filed 9–15–97; 8:45 am]

BILLING CODE 6560–50–M

COUNCIL ON ENVIRONMENTAL QUALITY

Meeting

AGENCY: Council on Environmental Quality.

ACTION: Notice of meeting.

SUMMARY: The Council on Environmental Quality (CEQ) has established a federal interagency task force to develop a memorandum of understanding (MOU) on coordinating environmental response actions with natural resource restoration under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other laws. CEQ has scheduled a public meeting to discuss the scope and focus of the MOU. All interested parties are encouraged to attend. The meeting will be an opportunity to present proposals and ask questions. If you are interested in making a presentation, please call Mary Morton at (202) 395–5750, so that an appropriate agenda can be developed.

TIME AND PLACE: The meeting will be held on October 3, 1997, from 10:00 to 4:00 in the White House Conference Center, 726 Jackson Place, Washington, D.C.

COMMENTS: If you have suggestions but either cannot attend the meeting or do not want to make a presentation, you may send written comments to Mary Morton, CEQ, Old Executive Office Building, Washington, D.C. 20501. Comments must be submitted by October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Morton at (202) 395–5750.

Bradley M. Campbell,

Associate Director.

[FR Doc. 97–24473 Filed 9–15–97; 8:45 am]

BILLING CODE 3125–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of High Intensity Drug Trafficking Areas

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists two (2) counties in New Mexico designated by the Director of National Drug Control Policy, as additions to the Southwest Border High Intensity Drug Trafficking Area (HIDTA). The Southwest Border HIDTA in New Mexico currently consists of Bernalillo, Hidalgo, Grant, Luna, Dona Ana, Eddy, Lea, and Otero Counties. The additional counties in New Mexico are Chaves and Lincoln. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated pursuant to 21 U.S.C. 1504(c), as amended, to promote more effective coordination of drug control efforts. This action will support local, New Mexico, and Federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluation of the effectiveness of these coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Richard Y. Yamamoto, Director, HIDTA, Office of National Drug Control Policy, Executive Office of the President, Washington, D.C. 20503; 202–395–6755.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users. Also in 1994, the Director designated Puerto Rico/U.S. Virgin Islands as a HIDTA based on the significant amount of drugs entering the United States through this region. In 1995, the Director designated three more HIDTAs in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas.

Five new HIDTAs have been designated in 1997. These are: the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi); the Lake County, Indiana HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with focus on methamphetamine); the Northwest HIDTA (includes seven counties of Washington State); and the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming).

The program supports more than 150 co-located officer/agent task forces in fifteen regions of the country, including the entire Southwest Border. The HIDTA program strengthens mutually supporting local, State, and Federal drug trafficking and money laundering task forces, bolsters information analysis and sharing networks and, improves integration of law enforcement, drug treatment and drug abuse prevention programs.

Dated: September 3, 1997.

Barry R. McCaffrey,

Director.

[FR Doc. 97–24535 Filed 9–15–97; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors On Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

Dates and Place: September 29, 1997. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place, N.W., Washington, D.C. 20500.

Type of Meeting: Open.

Proposed Schedule and Agenda: The PCAST will meet in an open session at 10:00 a.m. on Monday, September 29, 1997. The meeting will focus on the full report by the Energy Panel, updates from the Biodiversity and Education Panels, Industry Partnerships Update, International Science and Technology Cooperation/Technology Commercialization, U.S./Japan Science and Technology Relationship, National Alliance of Business, and the NSF-Department of Energy Working Group Report on Math and Science Education. This session will end at approximately 5:00 p.m.

Public Comments: There will be a time allocated for the public to speak on any of the above agenda items. We request that you send to us the topic that you would like to discuss at the PCAST meeting, or you can send your comments in writing five (5) days in advance of the meeting. Please notify Cheryl Hill on (202) 456–6100 or fax your request/comments on (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Cheryl Hill at (202) 456–6100 prior to 3:00 p.m on Friday, September 26, 1997. Other questions may be directed to Angela Phillips Diaz, or Yolanda Comedy at (202) 446–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established on November 23, 1993, by Executive Order 12882, as amended, and continued through September 30, 1997, by Executive Order 12974. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of Hewlett-Packard Company.

Dated: September 9, 1997.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 97–24584 Filed 9–12–97; 10:47 am]

BILLING CODE 3170–01–P–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 10, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 16, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

OMB Approval Number: 3060–XXXX.

Title: Accounting for Judgements and other Costs Associated with Litigation, CC Docket No. 93–240.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Response: 36 hours.

Cost to Respondents: N/A.

Total Annual Burden: 36 hours.

Needs and Uses: In CC Docket No. 93–240, the Commission considers the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to Part 32 of its rules and regulations. The Commission concludes that there should be special rules to govern the accounting treatment of federal antitrust judgements and

settlements, in excess of the avoided costs of litigation, but not for litigation expenses. The Commission rather concludes that these special rules should not apply to cost arising in other kinds of litigation. To receive recognition of its avoided costs of litigation, a carrier must make a demonstration in a request for special relief.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24517 Filed 9–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Dispute Resolution Neutrals Questionnaire.''

DATES: Comments must be submitted on or before November 17, 1997.

ADDRESSES: Send written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 7th Street N.W., Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Dispute Resolution Neutrals Questionnaire.

OMB Number: 3064–0107.

Frequency of Response: Occasional.

Affected Public: Parties wishing to be considered for inclusion on the FDIC's Roster of Dispute Resolution Neutrals.

Estimated Number of Respondents: 100.

Estimated Time per Response: 0.5 minutes.

Estimated Total Annual Burden: 50 hours.

General Description of Collection: The FDIC's Roster of Dispute Resolution Neutrals is part of its Alternative Dispute Resolution (ADR) program. Parties wishing to be considered for inclusion on the Roster must submit a completed questionnaire containing biographical and demographic data. The information obtained from respondents is used to evaluate the candidate's qualifications to serve as neutrals in cases involving ADR.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the 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 the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 10th day of September 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–24472 Filed 9–15–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Correction

This notice corrects a notice (FR Doc. 97-15269) published on page 31820 of the issue for Wednesday, June 11, 1997.

Under the Federal Reserve Bank of Atlanta heading, the entry for Susma Patel, London, England; Suketu Madhusudan Patel (Suku), London, England; Parimal Kantibhai Patel (Perry), London, England; Bharat Muljibhai Amin, London, England; and Dennis John Lloyd King, Surrey, England, collectively as the Patel Group, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Sushilaban Patel, London, England; acting in concert, to acquire shares of First Bankshares, Inc., Longwood, Florida, and thereby indirectly acquire First National Bank of Central Florida, Longwood, Florida.

Comments on this application must be received by September 30, 1997.

Board of Governors of the Federal Reserve System, September 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24445 Filed 9–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 30, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. MidSouth Bancorp, Inc., ESOP, Lafayette, Louisiana; to acquire an

additional 1.51 percent, for a total of 10.57 percent, of the voting shares of MidSouth Bancorp, Inc., Lafayette, Louisiana, and thereby indirectly acquire MidSouth National Bank, Lafayette, Louisiana.

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

1. Rodney G. Kroll, Waco, Texas, to acquire 23.0 percent; Tommy G. Salome, Crawford, Texas, to acquire 21.8 percent; Newman E. Copeland, Waco, Texas, to acquire 11.5 percent; Scott J. Salmans, Waco, Texas, to acquire 11.5 percent; Rondy T. Gray, Waco, Texas, to acquire 11.5 percent; Charles B. Turner, Waco, Texas, to acquire 11.5 percent; James H. DuBois, Waco, Texas, to acquire 4.6 percent; and Time Manufacturing Company, Waco, Texas, to acquire 4.6 percent, of the voting shares of First Riesel Corporation, Riesel, Texas, and thereby indirectly acquire First State Bank, Riesel, Texas.

Board of Governors of the Federal Reserve System, September 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24446 Filed 9–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Comment and Hearings on Joint Venture Project

AGENCY: Federal Trade Commission.

ACTION: Notice of second opportunity for comment and public hearing on Joint Venture Project.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is requesting public comment about issues to be addressed in the Joint Venture Project that the Commission has authorized. The Project is being undertaken by the Commission in collaboration with the Department of Justice. Comments may be provided to the Commission in writing as specified below. In addition, the Commission will hold public hearing concerning these issues in November, 1997.

The Joint Venture Project grows out of public hearings held by the FTC in the fall of 1995, at which businesses reported that global and innovation-based competition is driving firms toward ever more complex collaborative agreements that sometimes raise new competition issues. Some commenters at those hearings also requested clarification and updating of current antitrust policy toward business collaborations among competitors.

The Joint Venture Project will address whether antitrust guidance to the business community can be improved through clarifying and updating antitrust policies regarding joint ventures and other forms of competitor collaborations. As has been generally noted, businesses may find it desirable to collaborate with rivals in order to achieve a large variety of goals: Attain economies of scale; increase capacity and market access; minimize risk; avoid duplication; transfer, commercialize, or distrubte technology efficiently; combine complementary or co-specialized capabilities; or better appropriate the returns of innovation. Some competitor collaborations, however, raise antitrust concerns about the degree to which competition among rivals has been curtailed. In such cases, antitrust enforcers must assess whether and to what extent competition is harmed.

Issues relevant to why and how competitors wish to collaborate with their rivals, and the impact those arrangements have on competition, are of interest to the Commission in connection with the Joint Venture Project. In order to better inform itself as to these issues, the Commission engaged in a first round of public comment and hearings regarding issues identified in a notice published on April 28, 1997, at 62 FR 22945. Now the Commission is seeking comment and testimony regarding additional issues, including some issues that the first round of comments and testimony have indicated warrant follow-up attention.

The Commission's April 28 notice sought information relating to many of the issues associated with the potential anticompetitive effects of competitor collaborations. Consequently, the factual questions in this notice deal primarily with possible efficiencies. Specifically, the FTC is seeking comment at this time on the following issues:

Factual Questions Relating to Competitor Collaborations

The Commission is interested in better understanding the efficiencies that may be generated by competitor collaborations.[1] As an aid to understanding, the Commission has included the following questions as examples of the kinds of factual information in which the Commission is interested. Those who respond should neither feel constrained by those questions nor compelled to answer each one, however.

Because real-world examples are usually the most informative, the Commission would prefer information concerning competitor collaborations that actually have been undertaken. However, recognizing that businesses may wish to protect confidential information about some collaborations, the Commission also encourages the use of hypothetical fact patterns to describe and discuss the efficiencies that may result from collaborations among competitors.

Questions

What kinds of efficiency benefits are most frequently attributed to competitor collaborations, e.g., economies of scale, risk reduction, or learning advantages?

To what extent are differences in assets or technology among prospective participants important to the possible efficiency benefits from a competitor collaboration?

What contractual problems do prospective competitor collaboration participants encounter in designing an arrangement to achieve efficiency gains, and how have those problems been solved? What types of agreements or mechanisms are most frequently or most successfully used to align incentives? to safeguard the value of assets or efforts that individual participants might contribute to the collaboration? to deal with possible disputes among the participants? Are particular contractual problems more pressing in certain kinds of ventures, or in certain industries, than in others?

How and under what circumstances do variations in a competitor collaboration's governance structure—such as variations in individual participants' abilities to affect the collaboration's level of output or to control portions of its productive capacity—affect the collaboration's ability to achieve efficiencies?

Under what circumstances might restrictions on the ability of participants to compete promote legitimate efficiency goals? Specifically, when and how can restrictions on price, quality, advertising, geographic scope, or other dimensions of competition contribute to legitimate efficiency ends? Are some restrictions more closely related to the formation of a competitor collaboration, while others are needed to help the collaboration run smoothly after it is formed?

Under what circumstances might various exclusivity provisions be related to the efficiency goals of the competitor collaboration? Examples could include

[1] For purposes of this notice, ''competitor collaborations'' should be understood as including all collaborations, short of a merger, between or among entities that would have been actual or likely potential competitors in a relevant market absent that collaboration.

agreements that participants satisfy all of their input needs from the collaboration or that participants refrain from competing with the collaboration, either unilaterally or as part of another group.

When can information exchanges (including exchanges of competitively sensitive data) among participants in a competitor collaboration be necessary to achieving efficiencies?

How and under what circumstances do restrictions on membership in or access to assets controlled by a competitor collaboration promote efficiency? What criteria do firms employ in initially selecting co-participants when establishing competitor collaborations?

Can reciprocal buying agreements among participants or restrictions on participants' activities outside the collaboration's market have efficiency rationales?

Under what circumstances do restraints in competitor collaborations give rise to efficiencies that are experienced over the long run or that affect competition in a dynamic sense (such as through incentives for innovation) rather than in the short run?

What factors affect determinations to pursue business goals through traditional joint ventures as opposed to alternative mechanisms such as short-term contracts, long-term contracts, licensing and franchise agreements, minority equity investments, strategic alliances, and asset acquisitions? When are the various alternatives relatively good or relatively poor substitutes in achieving efficiency goals?

Has the mix between traditional joint ventures, short- and long-term contracts, licensing or franchising, minority equity investments, strategic alliances, and asset acquisitions changed over time? If so, what factors are responsible?

In what ways does the initial agreement as to the duration of a competitor collaboration affect its ability to achieve efficiencies?

Antitrust law often considers whether efficiency goals might be achieved with less competitively restrictive alternatives. What factors must participants in competitor collaborations take into account (other than potential antitrust liability) in determining the breadth of a competitive restraint? Are there real-world examples in which relatively narrow restraints were ineffective in achieving efficiency goals?

To what extent has non-exclusivity—the ability of the participants in a competitor collaboration to compete with the collaboration—reduced the anticompetitive effects of competitor collaborations? What factors tend to demonstrate that a competitor collaboration is non-exclusive in fact as well as on paper?

Policy and Legal Questions Relating to Competitor Collaborations

The Commission also is interested in better understanding the extent to which antitrust law and the antitrust agencies' current policy guidelines have successfully dealt with issues raised by competitor collaborations and how the usefulness of antitrust guidance might be improved. The following questions are suggestive of issues that would be of interest in responses, but, again, the questions are not intended to constrain or to require responses.

Questions

The State of Antitrust Law

What aspects of antitrust law regarding the efficiencies of competitor collaborations require clarification? For example, is clarification required regarding the evaluation of efficiency justifications for competitive restrictions, information exchanges, or membership rules?

Have there been any circumstances in which the chosen form of competitor collaboration (such as traditional joint ventures, short- and long-term contracts, licensing and franchise agreements, minority equity investments, strategic alliances, and asset acquisitions) has been affected by uncertainty about antitrust rules or possible costs of antitrust investigation or litigation?

Have there been any circumstances in which antitrust standards regarding less restrictive alternatives, including burdens of proof, have failed to take into account the difficulty in practical terms of fashioning and implementing a theoretically less restrictive alternative?

Antitrust standards for distinguishing legitimate competitor collaborations from ''sham'' arrangements often have been articulated in terms of ''integration'' rather than in terms of ''efficiencies.'' Have there been circumstances when the use of integration-based standards has deterred the formation or impaired the operation of competitor collaborations that could have enhanced competition? If so, please give specific real-world examples (or explain in the context of hypothetical facts). Under what circumstances might greater integration signal greater potential for anticompetitive effects as opposed to a greater likelihood of achieving procompetitive efficiencies? Should more specific standards for distinguishing legitimate from sham arrangements be considered in conjunction with particular types of collaborative activity or particular industries?

To what extent, if any, should the expected evolution of a competitor collaboration be taken into account in determining its state of integration? For example, when, if ever, should rule of reason treatment be accorded a collaboration that fails integration criteria today on grounds that it may pass muster in the near future? How could enforcement agencies evaluate such a likelihood? Would such dynamic considerations be particularly relevant in certain industries or in particular circumstances? If so, where and why?

Antitrust standards for distinguishing competitor collaborations warranting rule of reason review rather than *per se* condemnation have sometimes looked to whether the collaboration has created a new product. What are the factors that should be included in a determination that the fruits of a competitor collaboration constitute a new product? What role should a determination that a competitor collaboration produces a new product play in the assessment of the collaboration's competitive effects?

What role should a determination that a competitor collaboration adds capacity in a relevant market play in the assessment of the collaboration's competitive effects?

What role should a determination that a competitor collaboration is non-exclusive—that is, that it allows its participants to compete independently in the joint venture market—play in the assessment of the collaboration's competitive effects?

What mechanisms should be employed in assessing the net effects of a competitor collaboration (or of a restraint associated with a competitor collaboration) that would likely achieve efficiencies but also would likely harm competition absent the efficiencies?

Are there instances when unusual cost or demand conditions might make it appropriate to modify or qualify general antitrust policy with regard to competitor collaborations? For example, should enforcement policy concerning competitor collaborations be modified when there are substantial scale economies from increasing group size or consumer switching costs, such as may arise in network industries or in standard-setting contexts?

Under what circumstances, if any, should participants be able to assert that membership restrictions are necessary to ensure that members of a competitor collaboration can use cost advantages or innovation to compete more effectively in the output market?

Are there any circumstances under which the competitive effects of restraints associated with a competitor collaboration should be analyzed like the competitive effects of single firm conduct?

Under what circumstances is a competitor collaboration less likely than a merger of the same participants to restrict competition within any relevant market? What adjustments to merger analysis could take these considerations into account? Under what circumstances is a competitor collaboration more likely than a merger to restrict competition within any relevant market? What adjustments to merger analysis could take these considerations into account?

Under what circumstances is a competitor collaboration more likely than a merger of the same participants to achieve efficiencies within any relevant market? What adjustments to merger analysis could take these considerations into account? Under what circumstances is a competitor collaboration less likely than a merger of the same participants to achieve efficiencies within any relevant market? What adjustments to merger analysis could take these considerations into account?

FTC/DOJ Guidelines

If the Joint Venture Project were to result in the development of guidelines applicable to competitor collaborations, what factors should be considered in demarcating the division between transactions covered by the new guidelines and transactions covered by the existing Department of Justice and Federal Trade Commission Horizontal Merger Guidelines?

DATES: Any interested person may submit written comments by December 12, 1997. Requests to participate in public hearings should be submitted by October 17, 1997, or earlier if at all possible. Such requests should identify the requesting party and briefly state the matter than the party wishes to address at the hearings. Public hearings will be held in November, 1997, at the Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

ADDRESSES: To facilitate efficient review of public comments, all comments should be submitted in written and electronic form. Electronic submissions may be made in one of two ways. They may be filed on either a 5 and ¼ or 3 and ½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows 3.1 are acceptable.

Files from other operating systems should be submitted in ASCII text format.) Alternatively, electronic submissions may be sent by electronic mail to jventures@ftc.gov. Submissions should be captioned ''Comments on Issues relating to Joint Venture Project—Second Federal Register Notice'' and addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Notice of interest in participating in the hearings also should be addressed in writing to the Office of the Secretary at the above address.

FOR FURTHER INFORMATION CONTACT: Policy Planning staff at (202) 326–3712.

SUPPLMENTARY INFORMATION: The Commission is examining its role in enforcing antitrust laws in light of the above issues. Public comments and hearings are expected to provide information relevant to determining what, if any, actions may be desirable. The Commission has general authority under the FTC Act to interpret its substantive laws through guidelines, advisory opinions, and policy statements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–24515 Filed 9–15–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 1, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Jaime Gilinski, Santafe de Bogota, Columbia; to acquire 100 percent of the voting shares of Eagle National Holding Company, Inc., Miami, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. James Randel Smith, Auburn, Nebraska, to retain 33.3 percent; Jerry A. Jobe, Tabor, Iowa, to acquire 33.3 percent; and Grant T. Schaaf, Randolph, Iowa, to acquire 33.3 percent, of the voting shares of Tabor Enterprises, Inc., Tabor, Iowa, and thereby indirectly acquire First State Bank, Tabor, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Craig Dwight Heath, Phoenix, Arizona; to acquire 100 percent of the voting shares of Texico Bancshares Corporation, Texico, Illinois, and thereby indirectly acquire Texico State Bank, Texico, Illinois.

Board of Governors of the Federal Reserve System, September 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24579 Filed 9–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of Mercantile Bank of Southwest Florida, Naples, Florida.

Board of Governors of the Federal Reserve System, September 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24580 Filed 9–15–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat; Cancellation of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Federal Acquisition Regulations eliminated the need for Optional Form 333, Procurement Integrity Certification For Procurement Officials removing the regulations that required its use. Therefore, OF 333 is cancelled. This deleted requirement was effective January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano, (202) 501–1758.

DATES: Effective upon publication in the **Federal Register** September 16, 1997.

Dated: September 8, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–24513 Filed 9–15–97; 8:45 am]

BILLING CODE 6820–34–M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Fall 1997 meeting on Monday, October 20, 1997, through Thursday, October 23, 1997, in Clearwater Beach, Florida. The meeting sessions will take place from 9 a.m. until 5 p.m. on Monday, Tuesday, Wednesday, and from 9 a.m. until 12 noon on Thursday. The sessions will be held at the Adam's Mark Caribbean Gulf Hotel, 430 South Gulfview Boulevard, Clearwater Beach, Florida. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Adam's Mark Caribbean Gulf Hotel for anyone needing hotel accommodations. Telephone: 800–444–ADAM, 813–443–5714; FAX: 813–442–8389. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $72.

Michael F. DiMario,

Public Printer.

[FR Doc. 97–24508 Filed 9–15–97; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

National Study of Assisted Living Facilities for the Frail Elderly—New—The goal of this study is to determine where assisted living fits in the continuum of long term care and to examine its potential for addressing the needs of elderly persons with disabilities. The study will address such topics as trends in supply and demand; barriers to development; the effect of key assisted living features on resident satisfaction and other outcomes. Surveys of operators, staff and elderly residents will be conducted.

Respondents: Assisted Living Facilities operators, staff and residents—Burden Information on Operator Screen—*Number of Responses:* 1958; *Burden per Response:* 10 minutes; *Total Screen Burden:* 326 hours—Burden Information for Operator Telephone Interview—*Number of Responses:* 230; *Burden per Response:* 20 minutes; *Total Burden:* 77 hours—Burden Information for Operator In-Person Interview and Supplement—*Number of Responses:* 690; *Burden per Response:* 45 minutes; *Total Burden:* 518 hours—Burden Information for Staff Interview—*Number of Responses:* 1380; *Burden per Response:* 20 minutes; *Total Burden:* 460 hours—Burden Information for Resident Interview—*Number of Responses:* 2496; *Burden per Response:* 30 minutes; *Total Burden:* 1248 hours—Burden Information for Resident Proxy Interview—*Number of Responses:* 1230; *Burden per Response:* 15 minutes; *Total Burden:* 308 hours—Burden Information for Family Member Interview—*Number of Responses:* 897; *Burden per Response:* 20 minutes; *Total Burden:* 299 hours—Burden Information for Discharged Resident Interview—*Number of Responses:* 117; *Burden per Response:* 10 minutes; *Total Burden:* 20 hours—Burden Information for Discharged Resident Proxy Interview—*Number of Responses:* 470; *Burden per Response:* 12 minutes; *Total Burden:* 94 hours—*Total Burden for the Survey:* 3,350 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: September 5, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–24434 Filed 9–15–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–23–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Multi-Center Cohort Study to Assess the Risk and Consequences of Hepatitis C Virus Transmission from Mother to Infant (0920–0344)—Reinstatement—The purpose of the study is to determine the incidence of vertical hepatitis C virus (HCV) transmission, to assess risk factors for vertical HCV transmission, to assess the clinical course of disease among infants with HCV infection, and to assess diagnostic methods for detecting HCV infection in infants. Respondents for the study will be anti-HCV positive mothers.

There is no cost to the respondents. They will be remunerated for travel costs; provided well-child visits and free vaccinations for infants enrolled in the study; and, provided anti-HCV testing to all family members free of charge. The total annual burden hours are 277.

Respondents	Form name	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Individual Mothers	Form A	300	1	0.25
Mothers	Form B	1200	1	0.25
Mothers	Form C	300	1	0.10
Mothers	Form D	300	1	0.25
Family members	Form E	700	1	0.25
Mothers	Form F	300	1	0.25
Mothers	Form G	300	8	0.10

*The annualized response burden is estimated to be 970 hours/3.5 years= 277 hours. (Target enrollment in the study is 300; the target population will be drawn from those who complete Form B. Family members will complete Form E.)

2. Information Collection Procedures for Evaluating Toxicological Profiles—New—The Agency for Toxic Substances and Disease Registry (ATSDR) prepares toxicological profiles in accordance with guidelines developed with guidelines developed by ATSDR and EPA and each profile is revised and republished as necessary, but no less often than every three years. The principal audiences for the toxicological profiles are health professionals at the federal, state, and local levels, interested private sector organizations and groups, and members of the public.

This is a request for approval to collect information in the profiles from users on: (a) Affiliation of users of the profiles, (b) clarity of discussion in the profiles, (c) consistency of information in the profiles, (d) completeness of information in the profile, and (e) utility of information in the profile.

The information will be used in an effort to maintain customer satisfaction concerning use of the profiles by these multi-disciplinary users. This will also ensure that we continue to provide a client-oriented product. This effort will be accomplished through enhancement of the built-in system used for updating existing toxicological profiles and improving the utility of newly developed profiles by use of these user surveys.

The only cost to respondents will be the time to complete the form, which we estimate at less than 15 minutes per respondent. We expect respondents of the toxicological profile survey to come from a wide range of occupational and professional backgrounds and have an average hourly wage of $15. The total annual burden hours are 750.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response
Questionnaire	6000	1	0.25

3. NIOSH Training Grants, 42 CFR part 86, Application And Regulations—(0920–02610)—Reinstatement—Public Law 91–596 authorizes CDC/NIOSH to support ''education programs that provide an adequate supply of qualified personnel * * * by grants or contracts'' to assure a safe and healthful work environment. NIOSH awards grants for both short-term and long-term training to academic institutions and other organizations interested in providing training for professionals. Grants are also provided to Educational Resource Centers (ERCs) which provide multi disciplinary graduate training for industrial hygienists, occupational physicians, occupational health nurses, safety professionals and other occupational health-related disciplines in addition to continuing education for practicing professionals and outreach in the Region. 42 CFR Part 86, ''Grants for Education Programs in Occupational Safety and Health, Subpart B-Occupational Safety and Health Training, provides guidelines for implementing Public Law 91–596. The training grant application form is used by the National Institute of Occupational Safety and Health to collect information from potential applicants. The information is used to determine the eligibility of applicants for review, to calculate the amount of each award and to judge the merit of each application. CDC Form 2.145A is used for new and competing continuation grants; CDC Form 2.145B is used for non-competing awards. If this information is not collected, grants cannot be reviewed and awarded. The total annual burden hours are 4,635.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Training Grant Application			
ERC	3	1	348
Training Grant	12	1	63
Continuation Grant Application			
ERC	11	1	189
Training Grant	28	1	27

Dated: September 10, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–24482 Filed 9–15–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0375]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer in olefin copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4553) has been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for olefin copolymers complying with 21 CFR 177.1520(c), items 3.1 and 3.2, intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 29, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–24424 Filed 9–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 6, 1997, 8:30 a.m. to 5 p.m., and October 7, 1997, 8:30 a.m. to 2 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Elisa D. Harvey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 6, 1997, the committee will discuss and make recommendations on a premarket approval application for a thermal endometrial ablation device. On October 7, 1997, the committee will discuss and advise FDA on a petition for reclassification of home uterine activity monitors from class III (premarket approval) to class II (special controls).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 29, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on October 6 and 7, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 29, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 8, 1997

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–24509 Filed 9–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–54]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Ambulatory Surgical Center Conditions of Coverage and Supporting Regulations in 42 CFR 416.43 and 416.47; *Document No.:* HCFA–R–54 (0938–0506); *Use:* Regulation standards are designed to ensure that each Ambulatory Surgical Center has a properly trained staff and adequate physical environment to provide an appropriate type and level of care. *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,341; *Total Annual Responses:* 2,341 *Total Annual Hours:* 1.

It should be noted for the HCFA–R–54, OMB 0938–0506, the applicability and burden associated with the ICRs captured in this submission have been adjusted to properly reflect the degree of burden associated with this collection. In particular, the ICRs captured in this submission have been determined to be approved under 0938–0266 or the burden has been deemed usual and customary in accordance with the 1995 PRA. In order to comply and properly reflect the Act, HCFA assigned a token one-hour of burden for this submission.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 9, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–24538 Filed 9–15–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant to American Council for Drug Education of New York

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Planned award to enhance the existing services of the National Helpline of Phoenix House.

SUMMARY: This notice is to provide information to the public concerning the planned award by CSAT/SAMHSA to the American Council for Drug Education of New York to enhance and expand the quality of referral services, responsiveness, and information currently being provided to the public via the National Helpline of Phoenix House. This initiative is also designed to provide CSAT/SAMHSA with analyses of calls received and all critical information on its efforts to expand the availability of effective treatment and recovery services for alcohol and drug problems.

The American Council for Drug Education of New York, which operates the National Helpline of Phoenix House, provides the public with free, confidential telephone access to substance abuse education, information, treatment referrals, and other related services through a confidential resource. The Helpline also disseminates information to researchers, prevention and treatment practitioners, and the general public on the incidence and prevalence of drug use and prevention and treatment approaches. The Helpline is a source of important information for drug users at risk for contracting and spreading the AIDS virus as well.

Upon receipt of the satisfactory application recommended for approval by an Initial Review Group and the CSAT National Advisory Council, up to $200,000 in Federal funds may be awarded for a 12-month project period.

This is not a formal request for applications. Grant funds will be provided only to the organization named above.

Eligibility to apply for funds under this initiative is limited to the American Council for Drug Education of New York because it operates the National Helpline of Phoenix House, the only 24-hour-a-day nation-wide confidential Helpline dedicated exclusively to providing callers throughout the United States with information on and referrals to substance abuse treatment. The Helpline is the only organization equipped to carry out the purpose of this grant in the next 12 months.

AUTHORITY/JUSTIFICATION: This grant will be made under the authority of Section 501(d)(5) of the Public Health Service Act (42 USC 290aa).

The Catalog of Federal Domestic Assistance (CFDA) number is 93.230.

CONTACT: Ms. Charlotte O. Gordon or Ms. Carol DeForce, Office of Communications and External Liaison, CSAT, SAMHSA, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–5052.

Dated: September 8, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–24425 Filed 9–15–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4181–N–05]

NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP); Extension

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal year 1997; Extension.

SUMMARY: On May 23, 1997, at 62 FR 28538, HUD published a NOFA that announced Fiscal Year (FY) funding of

$250,649,052 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. This notice extends the application due date for NOFA applications that were addressed to HUD's Birmingham, AL, Field Office but could not be delivered because of an emergency in the field office building.

DATES: The original application deadline date and time of Friday, August 8, 1997, at 3:00 PM. local time, is not changed, except as indicated in this notice. Applications received by August 11, 1997 at HUD's Birmingham, AL, Field Office, accompanied by affidavits declaring that delivery was attempted on August 8, 1997, before 3:00 PM, local time, will be eligible for consideration.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM CONTACT: The local HUD Field Office, Director, Office of Public Housing (Appendix ''A'' of the NOFA), or Malcolm E. Main, Office of Crime Prevention and Security, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's Fiscal Year (FY) 1997 funding of $250,649,052 under the Public and Indian Housing Drug Elimination Program) was published on May 23, 1997, 62 FR 28538, with an application due date of Friday, August 8, 1997, before 3:00 PM, local time.

On August 8, 1997, HUD's Birmingham, AL, Field Office was closed at approximately 12:45 CDT, due to a bomb threat. The Birmingham Police Department evacuated the Federal building in which the Field Office is located, and would not permit personnel or traffic, which included UPS and other delivery systems, to enter the area. The building did not officially reopen until Monday, August 11, 1997.

Because of this emergency situation, HUD has determined that it will accept applications received at its Birmingham Field Office through August 11, 1997, provided that the applicants submit affidavits that they attempted delivery to that Field Office before 3:00 PM local time on August 8, 1997.

Dated: September 10, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–24471 Filed 9–15–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–834056

Applicant: Michael T. Keys, Dahlonega, Georgia

The applicant requests authorization to take (harass during installation of artificial nest structures) the red-cockaded woodpecker, Picoides borealis, throughout the species range, in Florida, Georgia, South Carolina, North Carolina, Alabama, Mississippi, Louisiana, and Texas for the purpose of enhancement of survival of the species.

PRT–834070

Applicant: William T. Waddell, Point Defiance Zoo and Aquarium, Tacoma, Washington

The applicant requests authorization to take (harass) the endangered red wolf, *Canis rufus*, during captive breeding and husbandry at the Point Defiance Zoo and Aquarium, Tacoma, Washington, at facilities in Graham, Washington, and at other facilities selected by the permittee to assist in the captive breeding program for this species. This action renews and updates previous authorization of ongoing captive breeding activities with the red wolf for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by October 16, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: September 8, 1997.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 97–24477 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–9287]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 0.8 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 3 S., R. 102 W.,
Sec. 25.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 16, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–24516 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA065–1492]

Final Environmental Impact Statement/ Environmental Impact Report for Soledad Mountain Project in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the County of Kern, State of California have prepared a Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Soledad Mountain Project, a proposed gold mining operation on public and private lands in Kern County, California.

DATES: Comments on the Final Environmental Impact Report/ Environmental Impact Statement must be postmarked no later than Oct. 19, 1997.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, California 93555, Attention: Ahmed Mohsen, EIS Coordinator.

FOR FURTHER INFORMATION CONTACT: Ahmed Mohsen-EIS Coordinator (760) 384–5421.

SUPPLEMENTARY INFORMATION: The purpose of the Final EIR/EIS is to present BLM and Kern County's response to public and agency comments on the Draft EIS/EIR and issues and concerns presented in the two public meetings held on June 24th & 25th, 1997. This is an abbreviated Final EIS/ERI formatted in accordance with NEPA Regulations at 40 CFR 1503.4(c). In order to provide continuity, response to the comments has been formatted and organized to fit within the body of the document circulated for public review in June and July 1997. Since this had been a joint federal/state process, administrative procedures for each lead agency govern the schedules and documentation requirements after completion of the Final EIS/EIR. Kern County Board of Supervisors held a public meeting on September the 8th in Bakersfield, California to review and consider the certification and adoption of the EIR and the issuance of the appropriate permits for the operation. After completion of the 30-day public review, BLM would consider and respond to any comments received during this period in the Record of Decision (ROD) document. The ROD is the final document produced by the process. It outlines the process by which project decisions were reached. A notice of availability of the ROD will be published in the **Federal Register** and other media when it is completed.

Greg Thomsen,

Acting Area Manager.

[FR Doc. 97–24441 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. September 4, 1997.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel North (south boundary, T. 9 N., R. 32 E.), portions of the Eighth Auxiliary Meridian East (each boundary), and of the subdivisional lines, the subdivision of sections 1 and 2, and of a metes-and-bounds survey in sections 1 and 2, T. 8 N., R. 32 E., Boise Meridian, Idaho, Group 952, was accepted September 4, 1997.

The dependent resurvey of a portion of the Second Standard Parallel North (south boundary) T. 9N., R. 33 E., Boise Meridian, Idaho, Group 952, was accepted, September 4, 1997.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: September 4, 1997.

Duane E. Olsen,

Chief Cadastral Survey or for Idaho.

[FR Doc. 97–24539 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., September 4, 1997.

The plat representing the dependent resurvey of the 1960 fixed and limiting boundary in section 15, T. 3 N., R. 41 E., Boise Meridian, Idaho, Group 941, was accepted, September 4, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: September 4, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–24540 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–5700–00; CACA 38601]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 40 acres of National Forest System land in Plumas County to protect the Soda Rock area. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by December 15, 1997.

ADDRESSES: State Director, BLM (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451.

FOR FURTHER INFORMATION CONTACT: Either Duane Marti, BLM California State Office, 916–978–4675, or David Bauer, Plumas National Forest, Forest Service, 916–283–2050.

SUPPLEMENTARY INFORMATION: On August 5, 1997, the Plumas National Forest, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 25 N., R. 9 E.,
Sec. 3, SW¼SW¼.

The area described contains 40 acres in Plumas County .

The purpose of the proposed withdrawal is to protect the Soda Rock area, which is located near Indian Falls and along Indian Creek.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are determined to be compatible with the use of the land by Forest Service.

Dated: September 9, 1997.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97–24442 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mary McLeod Bethune Council House National Historic Site Advisory Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mary McLeod Bethune Council House National Historic Site Advisory Commission will be held on September 30, 1997 at 1 p.m. to 5 p.m., at the Westin Bonaventure Hotel, located at 404 South Figueroa Street, Los Angeles, CA.

The Commission was authorized on December 11, 1991, by Pub. L. 102–211, for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the Commission are as follow: Dr. Dorothy I. Height; Ms. Barbara Van Blake; Ms. Brenda Girton-Mitchell; Dr. Savanna C. Jones; Dr. Bettye J. Gardner; Bettye Collier-Thomas; Mr. Eugene Morris; Dr. Rosalyn Terborg-Penn; Mrs. Bertha S. Waters; Dr. Frederick Stielow; Dr. Sheila Flemming; Dr. Ramona Edelin; Mrs. Romaine B. Thomas; Ms. Brandi L. Creighton; and Dr. Janette Hoston Harris.

The purpose of these meeting will be to continue planning and developing a general management plan for the Mary McLeod Bethune Council House National Historic Site. This meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish further information concerning this meeting or wish to file a written statement or testify at the meeting may contact Ms. Marta C. Kelly, the Federal Liaison Officer for the Commission, at (202) 673–2402. Minutes of these meetings will be available for public inspection 4 weeks after the meeting at the Mary McLeod Bethune Council House National Historic Site, located at 1318 Vermont Avenue, N.W., Washington, DC 20005.

Dated: September 11, 1997.

Richard E. Powers,

Associate Superintendent, National Capital Region.

[FR Doc. 97–24506 Filed 9–15–97; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Proposed Collection; Comment Request

ACTION: Proposed collection: Comment request.

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 30, 1997.

ADDRESS INFORMATION TO: Mary Ann Ball, Bureau of Management, Office of Administrative Services, Information Records Division, U.S. Agency for International Development, Washington, DC (202) 712–1765 or via e-mail MBall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0012.

Form Number: N/A.

Title: Supplier's Certificate Agreement with the U.S. Agency for International Development—Invoice and Contract Abstract.

Type of Submission: Renew.

Purpose: The U.S. Agency for International Development (USAID) finances goods and related services under its Commodity Import Program which are contracted for by public and private entities in the countries receiving the USAID assistance. Since USAID is not a party to these contracts, USAID needs some means to collect information directly from the suppliers of the goods and related services and to enable to USAID to take appropriate action against them in the event they do not comply with the applicable regulations. USAID does this by securing from the suppliers, as a condition for the disbursement of funds a certificate and agreement with USAID which contains appropriate representations by the suppliers.

Annual Reporting Burden:

Respondents: 400.

Total annual responses: 3,600.

Total annual hours requested: 1,800.

Dated: September 5, 1997.

Willette L. Smith,

Acting Chief, Information Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97–24536 Filed 9–15–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that a proposed consent decree in *United States* v. *Buyken Industries, et al.,* Civ. No. C97–1416D, was lodged with the United States District Court for the Western District of Washington, on August 27, 1997. That action was brought against defendants pursuant to section 107 of CERCLA for the recovery of response costs incurred and to be incurred at the Western Processing Superfund Site in Kent, Washington. Because the defendants have contributed minuscule amounts of hazardous substances to the Site (less than .002% of the wastes received at the Site), they are considered ''*de micromis*'' contributors of hazardous substances to the Site. Consistent with the ''Revised Guidance of CERCLA Settlements with *De Micromis* Waste Contributors,'' dated June 3, 1996, the United States has settled with these parties in exchange for certain certifications and covenants made by them. The settlement is designed to resolve fully each settling party's liability at the Site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Buyken Industries, et al.,* D.J. Ref. 90–7–1–233A. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Room 3600, Seattle, WA 98104, at the Region X office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101, and at the Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $2.75 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Buyken Industries, et al.,* D.J. Ref. 90–7–1–233A.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–24537 Filed 9–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government In The Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 1:30 p.m., Thursday, September 18, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting.

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion regarding military prisoners who are released from prison under mandatory release.
4. Discussion of the Expedited Revocation Procedure.
5. Approval of Final Revisions to Regulations regarding the Freedom of Information Act.
6. Proposed change to the Procedures Manual regarding Parolees who receive new convictions and alternative sanctions to revocation of parole.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 11, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–24721 Filed 9–12–97; 2:40 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Thursday, September 18, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

(1) Appeal to the Commission involving approximately four cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

(2) One case involving consideration of a request for exemption under 29 U.S.C. § 504.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 11, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–24722 Filed 9–2–97; 2:35 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

September 11, 1997.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 22, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of

Labor Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 x143).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment and Training, Office of Management and Budget, Room 10235, Washington, D.C. 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, technical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of Annual State Plans for FY'98 Welfare-to-Work Formula Grants.

OMB Number: 1205–0new.

Frequency: Annually.

Affected Public: State and local governments.

Number of Respondents: 56.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 168.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the Department of Labor to provide Welfare-to-Work (WtW) grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. WtW funds will be provided through formula grants to the States, grants to Indian tribes and competitive grants to public and private entities. In order to receive formula grant funds, the statute provides that the State must submit a plan for the administration of the WtW grant. This Planning Guidance and Instructions for Submission of Annual State Plans addresses the information required for States which will enable them to qualify for the formula grant funds in Fiscal Year 1998. Separate guidance will be issued for both the grants to the Indian tribes and the competitive grants.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–24526 Filed 9–15–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

Date: September 11, 1997.

The Department of Labor has submitted the Work Opportunity Tax Credit (WOTC) administrative forms and information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 19, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa O'Malley (202) 219–5096 x. 166).

Comments and questions about the WOTC ICR should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, e.g., permitting submissions of responses

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Tax Credit.

OMB Number: 1205–0371.

Agency number: ETA 9057–59; 9061–9036 and 9065.

Number of Respondents: 52.

Estimated Time per Response: 20 minutes.

Total Burden Hours: 2,600.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Total Burden Cost (capital/startup): –0–

Total Burden Cost (operating/maintaining: –0–

Description: The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under the Small Business Jobs Protection Act of 1996 (P.L. 104–188) and the Taxpayer Relief Act of 1997 (P.L. 105–34). Data collected on the WOTC will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, DC, through the appropriate Department of Labor regional office. The data will be used, primarily, to supplement IRS Form 8850, help expedite the processing of, either, employer requests for Certifications generated through IRS From 8850 or issuance of Conditional Certifications (CCs) and processing of employer requests for Certifications as a result of individuals' bearing SESAs or participating agencies' generated CCs, help streamline SESAs verification mandated activities, aid and expedite the preparation of the quarterly reports, and provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC program. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee House Ways and Means of the U.S. House of Representatives.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–24633 Filed 9–15–97; 8:45 am]

BILLING CODE 4510–22–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–49; Exemption Application No. D–10310, et al.]

Grant of Individual Exemptions; Bricklayers and Allied Crafts, Local No. 74 of DuPage County

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pension Fund of the Bricklayers and Allied Crafts, Local No. 74 of DuPage County, Illinois, a/k/a Masons' and Plasterers', Local No. 74 of DuPage County, Illinois (the Pension Plan) and Bricklayers and Allied Craftsmen Local No. 74 Apprenticeship, Education and Training Trust Fund (the Apprenticeship Plan; together, the Plans), Located in Westmont, Illinois

[Prohibited Transaction Exemption 97–49; Exemption Application Nos. D–10310 and L–10311]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the sale of certain real property (the Property) by the Apprenticeship Plan to the Pension Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) no commissions or other expenses are paid by the Plans in connection with the sale; (3) the purchase price for the Property represents its fair market value as determined by a qualified, independent appraiser; and (4) the Pension Plan's independent fiduciary and the Apprenticeship Plan's trustees have reviewed the transaction and have determined that the transaction is appropriate for each of the Plans and in the best interest of the Plans' participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 21, 1997 at 62 FR 39027.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

McLane Company, Inc. Profit Sharing Plan and Trust (the Plan), Located in Temple, Texas

[Prohibited Transaction Exemption 97–50; Exemption Application No. D–10340]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of two parcels of unimproved real property located in Temple, Texas and Goodyear, Arizona (the Properties) to McLane Company, Inc. (McLane), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions were satisfied: (a) The Sale was a one time transaction for a lump sum cash payment; (b) the purchase prices were the fair market values of the Properties as of the date of the Sale; (c) the Properties have been appraised by qualified independent real estate appraisers; (d) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and (e) the Plan paid no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 20, 1997 at 62 FR 27625.

EFFECTIVE DATE: The effective date of this exemption is April 21, 1993.

Written Comments

The Department received no requests for a public hearing on the proposed exemption. The Department received one written comment which was submitted by Sarofim Realty Advisors (the Applicant). The Applicant's comment, and the Department's response thereto, is summarized below.

First, the Applicant requests that the words ''the IMA'' should be inserted in the first sentence of Paragraph 7 of the Summary of Facts and Representations (SFR) at page 27627 in lieu of the phrase ''Investment Management Agreement'' (as such words are set forth in quotations). The Department concurs.

The third paragraph in Paragraph 9 of the SFR at page 27628 states:

> McLane also represents that, if McLane had treated the excess of the purchase price for the properties over their fair market values as a Plan contribution in 1993, the resulting allocations would not have violated the limitations of Internal Revenue Code section 415.

The Applicant requests that the paragraph be deleted in its entirety and replaced by a new paragraph that provides as follows:

> The Applicant represents that McLane's motives for consummating the Sale were not relevant to the process employed by the Applicant in evaluating whether or not, in the professional opinion of the Applicant, it would be prudent and in the best interest of Plan participants for the Applicant to direct the Trustee to consummate the Sale. The Applicant further represents that in connection with its negotiations with McLane, the Applicant sought and obtained for the Plan what the Applicant determined was the highest possible sales price for the

subject Properties. Such price, coupled with the Applicant's determination that continued holding of the Properties would likely result in further lost opportunities for the Plan to provide enhanced benefits from alternative investments, resulted in the Applicant's decision to direct the Trustee to consummate the Sale.

Although the Department has no objection to the new paragraph suggested by the Applicant, the Department continues to believe that the original language of the third paragraph in Paragraph 9 of the SFR is relevant to the issues addressed in the proposed exemption.

Finally, the Applicant requests that the Department modify the first sentence in Paragraph 10 of the SFR at page 27628. The Department does not object to this requested revision and amends the sentence to provide as follows:

In summary, the Applicant represents that it now understands that the Department is of the view that the conditions of PTE 84–14 may not have been satisfied with respect to the Sale.

The Department has considered the entire record, including the comments submitted by the Applicant, and has determined to grant the exemption as amended in response to the Applicant's comments.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

H. Weiss & Company, Incorporated Defined Benefit Pension Plan (The Plan), Located in New York, New York

[Prohibited Transaction Exemption 97–51; Application No. D–10402]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of a certain condominium unit (the Property) located in New York, New York, to Hanna Weiss, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party

(B) The sale is a one-time transaction for cash

(C) The Plan pays no commissions nor other expenses relating to the sale

(D) The purchase price is the greater of: (1) The fair market value of the Property as determined by a qualified, independent appraiser, or (2) the original acquisition price *;

(E) Before the transaction is consummated, the Plan has received rental payments of no less than the Property's fair market rental value for each month of the Plan's ownership of the Property during which it was occupied by Hanna Weiss, a party in interest with respect to the Plan; and

(F) Within 60 days of the publication in the **Federal Register** of this Notice, Weiss makes final payment to the Internal Revenue Service of any remaining unpaid excise taxes which are applicable under section 4975(a) of the Code by reason of the Plan's rental of the Property to a party in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on July 21, 1997 at 62 FR 39028.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan), Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 97–52; Exemption Application No. D–10445]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph # 6 of the notice of proposed exemption; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 11, 1997 at 62 FR 37307.

Temporary Nature of Exemption

The exemption is temporary and will expire five (5) years after the date of the grant. However, the exemption will extend until the maturity of any of the 90 day Loans made within the 5 year period.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of September, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 97–24462 Filed 9–15–97; 8:45 am]

BILLING CODE 4510–29–P

* The original acquisition cost is determined as follows: (original purchase price + aggregate real estate taxes + aggregate condominium association fees)—aggregate rental income = original acquisition cost.

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Regular Meeting of the Board of Directors

TIME AND DATE: 2:00 p.m., Thursday, September 25, 1997.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/ Secretary 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes:
  April 16, 1997 Annual Meeting
III. Resolution of Appreciation
IV. Budget Committee Report
  July 28, 1997 Meeting:
  a. FY 1997 Budget Reallocation Request
  b. FY 1998 Budget Request
  c. FY 1999 OMB Budget Submission
V. Audit Committee Report
VI. Treasurer's Report
VII. Appointment of Acting Treasurer
VIII. Executive Director's Quarterly Management Report
IX. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 97–24720 Filed 9–12–97; 2:30 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. *An estimate of the number of responses:* 755 responses annually.

7. *The estimated number of annual respondents:* 350 licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 56,712 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,537 hours (approximately 182 hours per respondent).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by October 16, 1997: Norma Gonzales, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 9th day of September 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–24560 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to Cleveland Electric Illuminating Company (CEICO), Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant (PNPP), Unit No. 1, located in Lake County, Ohio.

The proposed amendment would change the PNPP design basis as described in the Updated Safety Analysis Report (USAR). The change will add a description of the methodology utilized for determining the systems and components that are considered to require protection from tornado missiles.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is requesting NRC review and approval of changes to the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) to incorporate use of an NRC approved methodology to assess the need for additional positive (physical) tornado missile protection of specific features at PNPP. The USAR changes will reflect use of the Electric Power Research Institute (EPRI) Topical Report ''Tornado Missile Risk Evaluation Methodology'' (EPRI NP–2005), Volumes I and II. As noted in the NRC Safety Evaluation dated October 26, 1983 on this report, ''the current licensing criteria governing tornado missile protection are contained in Standard Review Plan (SRP) Sections 3.5.1.4 and 3.5.2. These criteria generally specify that safety-related systems be provided positive tornado missile protection (barriers) from the maximum credible tornado threat. However, SRP Section 3.5.1.4 includes acceptance criteria permitting relaxation of the above deterministic guidance, if it can be demonstrated that the probability of damage to unprotected essential safety-related features is sufficiently small.

''Certain Operating License (OL) applicants and operating reactor licensees have chosen to demonstrate compliance with tornado missile protection criteria for certain portions of the plant * * * by providing a probabilistic analysis which is intended to show a sufficiently low risk associated with tornado missiles. Some * * * have utilized the tornado missile probabilistic risk assessment (PRA) methodology developed by'' EPRI in the Topical Report listed above. The NRC noted that this report ''can be utilized when assessing the need for positive tornado missile protection for specific safety-related plant features.'' The methodology has subsequently been utilized in nuclear power plant licensing actions.

As permitted in NRC Standard Review Plan (NUREG–0800) sections, the total probability will be maintained below an allowable level, i.e., an acceptance criteria threshold, which reflects an extremely low probability of occurrence. The PNPP approach assumes that if the probability calculation result for the total plant identifies that the total probability of tornado missiles striking a portion of an ''important'' system or component is greater than or equal to 10^{-6}, then unique missile barriers would need to be installed to lower the total probability below the acceptance criteria of 10^{-6}.

With respect to the probability of occurrence or the consequences of an accident previously evaluated in the USAR, the possibility of a tornado reaching the Perry Nuclear Power Plant site and causing damage to plant structures, systems and components is a design basis event considered in the Updated Safety Analysis Report. The changes being proposed herein do not affect the probability that the natural phenomena (a tornado) will reach the plant, but they do, from a licensing basis perspective, affect the probability that missiles generated by the winds of the tornado might strike certain plant systems or components. As recently determined, there are a limited number of safety-related components that could theoretically be struck by a tornado generated missile. The probability of tornado generated missile strikes on ''important'' systems and components (as discussed in Regulatory Guide 1.117) is what is to be analyzed using the probability methods discussed above. The total (cumulative) probability of strikes will be maintained below an extremely low acceptance criteria to ensure overall plant safety. The proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the extremely low total probability of a tornado missile strike and thus an extremely low probability of a radiological release.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The possibility of a tornado reaching the Perry Nuclear Power Plant site is a design basis event considered in the Updated Safety Analysis Report. This change involves recognition of the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change therefore deals with an established design basis event (the tornado). Therefore, the proposed change would not contribute to the possibility of a new or different kind of accident from those previously analyzed. The probability and consequences of such a design basis event are addressed in Question 1 above.

Based on the above discussions, the proposed change would not create the possibility of a new or different kind of accident than those previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

This request does not involve a significant reduction in the margin of safety. The existing licensing basis for PNPP with respect to the design basis event of a tornado reaching the plant, generating missiles and directing them toward safety related systems and components is to provide positive missile barriers for all safety related systems and components. With the change, it will be recognized that there is an extremely low probability, below an established acceptance limit, that a limited subset of the ''important'' systems and components could be struck. The change from ''protecting all safety related systems and components'' to ''an extremely low probability of occurrence of tornado generated missile strikes on portions of important systems and components'' is not considered to constitute a significant decrease in the margin of safety due to that extremely low probability.

Therefore, the changes associated with the license amendment request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant

hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 16, 1997, 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 located at the Perry Public Library, 3753 Main Street, Perry, OH 44081. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 14, 1997, 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 located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 10th day of September 1997.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24558 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its October 16, 1996, application for proposed amendment to Facility Operating License No. NPF–38 for the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would have revised the facility technical specifications (TSs) pertaining TSs 3.2.1 and 3.2.4 and their surveillance requirements.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 9, 1997 (62 FR 17232). However, by letter dated August 26, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 16, 1996, and the licensee's letter dated August 26, 1997, which withdrew the application for license amendment. The above documents 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 room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 10th day of September, 1997.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24561 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant, Units 1 and 2, located in San Luis Obispo County, California.

The proposed amendments would approve a modification to the Diablo Canyon Power Plant (DCPP) Units 1 and 2 auxiliary saltwater (ASW) system to bypass approximately 800 feet of Unit 1 and 200 feet of Unit 2 Class 1 ASW pipe, a portion of which is buried below sea level in the tidal zone outside the intake structure. Upgraded flow meter and temperature instrumentation will be included. The project includes approximately 450 feet (both Units) of new pipe inside the intake structure, and 1,400 feet of new buried pipe between the intake and selected tie-in points in the existing pipe. This modification was completed on Unit 1 during the refueling outage completed this year.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary saltwater (ASW) system is not identified as the cause, or involved in the initiating event of, any Final Safety Analysis Report (FSAR) analyzed accidents. Thus, activities addressed herein will not increase the probability of occurrence of any FSAR evaluated accident.

During the construction of the ASW bypass piping, the integrity and performance of the ultimate heat sink will not be affected, nor will the ability of any safety-related system, structure, or component (SSC) to perform their function be compromised. Approved, written procedures are used during construction to assure the functioning of these SSCs (e.g., heavy load procedures, security procedures, tie-in procedures). The system unavailability due to construction is managed in accordance with Technical Specification (TS) limiting conditions for operation (LCO).

The ASW system is a moderate energy system. Since the bypass modification does not significantly change the operating parameters of the system, there is no change in the Medium Energy Line Break (MELB) analysis methodology for this system, and no increase in the probability of occurrence of a pipe crack. The ASW pipes are required to mitigate consequences of FSAR analyzed accidents.

The initial work for the ASW bypass project involved installation of Design Class I removable spool pieces in the existing ASW piping. The spool pieces removed were modified and reinserted into the existing ASW piping. The modifications to the spool pieces did not affect their flow characteristics or structural integrity. Therefore, the removable spool pieces did not cause ASW operating parameters to exceed their design basis, did not change any system interfaces, had no impact on ASW system capability to perform its function, and did not change the system's operation.

The work for this project was performed in a series of steps. For each step, the added work scope was incorporated in a design change package revision and a revised safety evaluation was performed.

The tie-in of the piping to the ASW system is done during separate system clearances during a refueling outage for each train; one train will remain in service during the outage at all times. The cross-tie between the two Units will be available during the work.

When all the work associated with the ASW bypass project is completed, including pipe and pipe support installation, structural modifications, and external protective features, the ASW system will perform its safety function as described in the FSAR. The flow in ASW pipes will not be significantly affected by this work. Per Mechanical Calculation M–988, the increase in head loss for bypass piping is not significant; the design basis flow is maintained with a margin and there is no significant effect on the Component Cooling Water (CCW) heat removal capacity.

The newly installed piping has been designed to withstand the appropriate design basis seismic loading and to withstand the effects of external events including flooding, tsunami, and tornadoes. The newly installed piping and associated support components have been evaluated, and where appropriate, designed to withstand system interactions including pipe breaks, internal flooding, seismic interaction, internally generated missiles, and fires.

Since the ASW system design bases parameters are maintained and the newly configured piping has been evaluated and designed to meet established licensing basis considerations, the consequences of an accident previously evaluated in the FSAR are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design and installation sequence for bypass pipes and connection to the Unit 1 ASW system were developed and sequenced so as not to affect the integrity of the pressure boundary or Paraliner of operating ASW trains.

Removable spool pieces were installed during Unit 1 seventh refueling outage (1R7). Plant procedures and proper sequencing of removal of the removable spool pieces and installation of tie-ins of bypass pipes will ensure adequate ASW is available for supporting the refueling and plant shutdown requirements. Tie-ins of Unit 1 bypass pipes will be done during separate system clearances during a refueling outage for each train; one train will remain in service during the outage at all times. The cross-tie between the two Units will be available during the work.

Piping layout and supports, design features for natural events, and evaluations and design features for systems interaction assure that the integrity of the ASW system for each unit is maintained.

The conservative analyses used in the piping design indicates there is a potential for soil liquefaction in some areas during certain seismic events (Hosgri earthquake). Liquefaction of soil is not considered in the licensing basis for the plant. Analyses using more recent methods indicate that actual settlements will be much less than predicted by the analyses used in the design, and that the piping will maintain its integrity.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change does not involve a significant reduction in a margin of safety.

TS 3.7.4.1 and 3.7.12, pertinent to the ASW system, are applicable for Modes 1 (Power Operation), 2 (Startup), 3 (Hot Standby), and 4 (Hot Shutdown). The installation of the Unit 1 ASW removable spool pieces were done during the 1R7 outage. During the refueling outage, the ASW trains were made inoperable one at a time for installation of a spool piece and were sequenced and scheduled to support TS 3.4.1.4.1 and 3.4.1.4.2 for residual heat removal (RHR) in Mode 5 (Cold Shutdown), and TS 3.9.8.1 and 3.9.8.2 for RHR in Mode 6 (Refueling) as applicable. Modification of two existing supports for Unit 2 Pipe 687 was done when the line was out-of-service during the Unit 2 seventh refueling outage. Tie-ins will occur during a refueling outage and during separate system clearances. The cross-tie between the two Units will be available during the work.

The TS basis for the ASW system is to provide sufficient cooling capacity for the continued operation of safety-related equipment during normal and accident conditions (TS Bases 3/4.7.4). This equates to providing sufficient cooling water for the CCW heat exchangers (HXs) to ensure CCW design basis temperature limits are not exceeded. Although the change in ASW pipe routing causes an increase in the pressure drop in the ASW piping, and therefore a decrease in ASW flow by approximately 3 percent (352 gpm), the design and licensing basis requirements of the ASW system will continue to be met.

Surveillance Test Procedure (STP) M–26, ''ASW Flow Monitoring,'' demonstrates that the ASW system provides adequate cooling to the CCW HX. The STP measures the ASW flow and then subtracts instrument inaccuracy and corrects for potential variations in tide level and CCW HX differential pressure (dP). The corrected ASW flow and temperature are then compared to the acceptance criteria. The acceptance criteria in STP M–26 have not changed as a result of the bypass project.

There will not be a safety significant issue associated with the reduction in flow caused by the bypass. As part of the ASW bypass project, ASW flow and temperature instruments are being replaced with more accurate instruments. In addition, the correction factors which are used to account for variations in tide level and HX dP were found to be very conservative and have been corrected. As a result of these changes, the corrections to the measured ASW flow will be smaller. Based on Calculation M–988, the required corrections to the flow will decrease by more than the reduction in flow caused by the bypass. In addition, the current STP results show that flow margin exists.

Therefore, none of the proposed changes involves a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 16, 1997, 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 located at the California Polytechnic State University, Robert El Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 26, 1997, 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 located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 9th day of September 1997.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24570 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

In the Matter of South Carolina Electric and Gas Company); (Virgil C. Summer Nuclear Station; Exemption

I

The South Carolina Gas and Electric Company (SCE&G or the licensee) is the holder of Facility Operating License No. NPF–12, which authorizes operation of the Virgil C. Summer Nuclear Station. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Fairfield County, South Carolina.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) The procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary.

Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at Virgil C. Summer Nuclear Station is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Virgil C. Summer Nuclear Station, and has determined that it is extremely unlikely that such an accident could occur if the licensee meets the following seven criteria:

1. Only one fuel assembly is allowed out of a shipping cask or storage rack at one time.
2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.
3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.
4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.
5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.
6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.
7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated July 17, 1997, as supplemented August 6, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request, the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that Virgil C. Summer Nuclear Station meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at Virgil C. Summer Nuclear Station.

The purpose of the criticality monitors required by 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption from the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants the South Carolina Electric and Gas Company an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (62 FR 47521).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24559 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 1, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 1, 1997–10:30 a.m. Until 12:00 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 10, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–24556 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 15, 22, 29, and October 6, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of September 15—Tentative

Wednesday, September 17

9:00 a.m. Briefing by DOE on Plutonium Disposition Strategy and Program (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Friday, September 19

10:00 a.m. Briefing by DOE and NRC on Regulatory Oversight of DOE Nuclear Facilities (Public Meeting) (Contact: John Austin, 301–415–7275)

11:30 a.m. Affirmation Session (Public Meeting)

a. Sequoyah Fuels Corp. & General Atomics; Docket No. 40–8027–EA; LBP–95–18 and LBP–96–24, Memoranda and Orders (Approving Settlements) (Tentative)

1:30 p.m. Briefing on Improvements in Senior Management Assessment Process for Operating Reactors (Public Meeting) (Contact: Bill Borchardt, 301–415–1257)

Week of September 22—Tentative

There are no meetings scheduled for the week of September 22.

Week of September 29—Tentative

There are no meetings scheduled for the week of September 29.

Week of October 6

There are no meetings scheduled for the week of September 29.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) —(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 12, 1997.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–24716 Filed 9–12–97; 2:27 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 070–00925]

Notice of Consideration of Amendment Request for Decommissioning the Cimarron Corporation Former Fuel Fabrication Facility in Crescent, Oklahoma, and Opportunity for a Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Nuclear Material License No. SNM–928, issued to the Cimarron Corporation (the licensee), to authorize decommissioning of its facility previously used as a fuel fabrication facility.

On April 19, 1995, the licensee submitted a site decommissioning plan (SDP) to NRC for review that summarized the decommissioning activities that will be undertaken to remove soils and rubble contaminated with radioactive material.

NRC will require the licensee to remediate the Cimarron facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the SDP, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment Approval of the SDP will be documented in an amendment to License No. SNM–928.

NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

1. By delivery to the Docketing and Services Branch, Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cimarron Corporation, P.O. Box 25861, Oklahoma City, OK 73125 Attention: Mr. Jess Larsen; and

2. NRC staff, by delivery to the Office of the Secretary, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, or by mail, addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, the SDP is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, D.C. 20555, or at NRC's Region IV offices located at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064. Persons desiring to review documents at the Region IV Office should call Linda Ousley at (817) 860–8219 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland, this 8th day of September 1997.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–24557 Filed 9–15–97; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electronic Power Plan Draft Amendments and Addendum

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of availability of the Addendum to the Draft Fourth Northwest Conservation and Electric Power Plan.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839, *et seq.*) (Act), in April 1983 the Council adopted a regional electric power plan, the Northwest Conservation and Electric Power Plan (plan). The plan was completely amended in 1986. Although the Act requires the Council to review the plan at least every five years, the Council has revised certain parts of the plan more often, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. For example, the Council updated certain technical data in a 1989 Supplement to the 1986 Power Plan. In April 1991, the Council adopted another complete amendment of the plan. In March 1996, the Council released for public comment the Draft Fourth Power Plan.

In the face of nationwide initiatives for restructuring the electrical industry, the governors of Idaho, Montana, Oregon and Washington convened a Comprehensive Review of the Northwest Energy System in late 1995. The Council recognized that many of the issues to be considered in its plan would also be taken up by the Comprehensive Review and therefore decided to wait until the review had issued its final report before completing the plan amendment process.

The Addendum to the Draft Fourth Northwest Power Plan has two principal objectives. First, it reviews important developments since the release of the draft power plan. These developments include what has happened with respect to: Generation and conservation resources; gas and electricity markets; electricity loads; institutions; and policies. The more important developments include the creation of new institutions in response to the increasingly competitive utility industry and the continued evolution of policies at the state and federal levels designed to facilitate competitive electricity markets.

The second purpose of the Addendum is to examine the relationships between the analysis contained in the draft power plan and the recommendations from the Comprehensive Review. In several instances, the Addendum suggests approaches that would help move the Northwest from the usually general nature of the Comprehensive Review's recommendations to the specifics that will have to be addressed by legislatures, and state and local regulators.

During the next several months, hearings in each of the four Northwest states will be scheduled, as required by the Act. The public is invited to comment on both the Draft Fourth Northwest Power Plan and the Addendum. Note that the text of the Draft Fourth Power Plan remains unchanged. It is the Addendum that contains revisions that reflect the recommendations of the Comprehensive Review.

SUPPLEMENTARY INFORMATION: The electricity industry nationwide is undergoing a radical restructuring. To ensure that the four Northwest states have a voice in how this restructuring affects the region, in late 1995 the governors of these states convened a ''Comprehensive Review of the Northwest Energy System.'' The steering committee of the review presided over 30 day-long meetings and almost 400 people were involved in more than 100 meetings of various work groups. The steering committee took public comment at 10 hearings on its draft report and presented its final recommendations to the four governors in December 1996.

To accommodate this regional review, the Council's draft plan took a different approach from that of earlier plans. The 1991 Power Plan, for example, had as its theme: ''A Time for Action.'' In contrast, this draft plan focuses on ''Northwest Power In Transition: Issues and Opportunities.'' The 1996 draft set out few policy determinations or recommended actions. Instead, it was designated to serve as a reference for the regional review. The goal of the draft plan reflected that of the governors in convening the regional review: To develop, through a public process, recommendations for changes in the institutional structure of the region's electric utility industry.

This draft plan and Addendum meet the requirements of the Northwest Power Act, which specifies what components the plan is to contain. The Act requires the plan to include a number of elements, including, but not limited to: An energy conservation program; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a 20-year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The plan also includes the Council's Columbia River Basin Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

FOR FURTHER INFORMATION: Please contact the Council's Central Office if you would like a copy of the Draft Fourth Northwest Power Plan, Document Number 96–5, and/or the Addendum, Document Number 97–7. The Council's address is 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222–5161 and (toll free) (800) 222–3355. The Council's FAX number is (503) 795–3370. Copies of each document can also be obtained from the Council's internet site: *www.nwppc.org.*

When submitting comments, please note prominently that you are commenting on Council Document Number 96–5 for the Draft Fourth Northwest Power Plan or Council Document Number 97–7 for the Addendum. Comments may be submitted by mail, by facsimile transmission (FAX), or by electronic mail at: *comments@nwppc.org.* The Council will accept written comments through close of business on Friday, October 31, 1997. The Council may hold consultations after than date, as necessary.

Stephen L. Crow,

Executive Director.

[FR Doc. 97–23943 Filed 9–15–97; 8:45 am]

BILLING CODE 6450–15–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice of Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, September 23 and 24, 1997, at the Madison Hotel, 15th & M Streets, NW, Washington, DC, 202/862–1600.

The Full Commission will convene at 9:00 a.m. on September 23, 1997, and adjourn at approximately 5:00 p.m. On Wednesday, September 24, 1997, the meeting will convene at 9:00 a.m. and adjourn at approximately 12:30 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 97–24431 Filed 9–15–97; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 29, File No. 270–169, OMB Control No. 3235–0149; Rule 83, File No. 270–82, OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') requests comments on the collections of information summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for extension and approval.

Rule 29 [17 CFR 250.29] states that ''[a] copy of each annual report submitted by any registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission.'' The Commission receives about 62 annual reports per year under this regulation, which imposes an annual burden of about 15.5 hours.

Rule 83 [17 CFR 250.83] authorizes an exemption from the ''at cost'' requirements of Section 13(b) for ''the performance of any service, sales, or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States * * *.'' The Commission receives about one application per year under Rule 83, which imposes an annual burden of about three hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

It should be noted that ''an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.''

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 30 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: September 5, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24545 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39032; File Nos. SR–Amex–96–19; SR–DBOE–96–79; SR–PCX–97–09]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc., and Order Granting Approval to Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options

September 9, 1997.

I. Introduction

On May 21, 1996, December 27, 1996, and April 1, 1997, respectively, the American Stock Exchange, Inc. (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the Pacific Exchange, Inc. (''PCX'') (collectively the ''Exchanges''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to eliminate position and exercise limits[3] for FLEX Equity options under a two-year pilot program.[4]

Notice of the proposed rule changes appeared in the **Federal Register** on June 12, 1996, January 17, 1997, and May 20, 1997, respectively.[5] No comments were received on the proposed rule changes. The Amex subsequently filed Amendment No. 1 to its proposed rule change on February 3,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the aggregate number of option contracts on the same-side of the market that an investor, or group of investors acting in concern, may hold or write. Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days.

[4] In general, FLEX Equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. (See Securities Exchange Act Release No. 37726 (September 25, 1996), 61 FR 51474 (October 2, 1996), regarding restrictions on the available exercise prices for FLEX Equity call options (File Nos. SR–Amex–96–29, SR–CBOE–96–56, and SR–PSE–96–31)).

[5] See Securities Exchange Act Release Nos. 37280 (June 5, 1996), 61 FR 29774 (June 12, 1996) (File No. SR–Amex–96–19); 38152 (January 10, 1997), 62 FR 2702 (January 17, 1997) (File No. SR–CBOE–96–79); and 38616 (May 12, 1997), 62 FR 27642 (May 20, 1997) (File No. SR–PCX–97–09).

1997.[6] The CBOE subsequently filed Amendment No. 1 to its proposed rule change on May 13, 1997.[7] This order approves the Exchanges' proposals, as amended, and solicits comments on Amex Amendment No. 1 and CBOE Amendment No. 1.

II. Background

On February 14, 1996 and June 19, 1996, the Commission approved the Exchanges' proposals to list and trade FLEX Equity options on specified equity securities.[8] According to the Exchanges, those proposals were designed to provide investors with the ability, within specified limits, to designate certain terms of the options. In support of their proposals, the Exchanges stated that in recent years, an over-the-counter (''OTC'') market in customized equity options had developed which permitted participants to designate the basic terms of the options including size, term to expiration, exercise style, exercise price, and exercise settlement value. According to the Exchanges, participants in this OTC market were typically institutional investors, who bought and sold options in large-size transactions through a relatively small number of securities dealers. To compete with this growing OTC market in customized equity options, the Exchanges proposed to expand their FLEX options rules[9] to permit the introduction of trading in FLEX options on specified equity securities that satisfied the Exchanges' listing standards for equity options.[10] The Exchanges' proposals allowed FLEX Equity option market participants to designate the following contract terms: (1) Certain exercise prices; (2) exercise style (*i.e.,* American, European, or capped); [11] (3) expiration date;[12] and (4) option type (*i.e.,* put, call, or spread). In addition, the Exchanges set position and exercise limits for FLEX Equity options at three times the position limits for the corresponding Non-FLEX Equity options on the same underlying security.[13] The Exchanges now propose to eliminate position and exercise limits for FLEX Equity options.

III. Description

The Exchanges believe that the elimination of position and exercise limits for FLEX Equity options is appropriate given the institutional nature of the market for this derivative product. The Exchanges also believe that large investors currently find the use of exchange-traded options impractical because of the constraints imposed by position limits. According to the Exchanges, with no position limits, additional investors will be attracted to exchange-traded options, thereby reducing transaction costs as well as improving price efficiency for all exchange-traded option market participants.

In addition, the Exchanges believe that FLEX Equity options, unconstrained by position limits, may become an important part of large investors' investment strategies. For instance, according to the Exchanges, in the absence of position limits, investors will be able to use exchange-traded options to implement specific viewpoints regarding the underlying common stock; viewpoints that take into account specific near- and long-term expectations for the underlying stock price as well as judgments on price volatility. Similarly, in the Exchanges' view, the ability to execute large exchange-traded option transactions will permit large investors to implement transactions that reflect the strength of their interest in buying or selling the underlying shares, as well as their specific viewpoints on the purchase or sale of the underlying shares.

In further support for their proposals, the Exchanges note that issuers of stocks underlying FLEX Equity options will be able to use such options, primarily through the sale of puts, as part of their stock repurchase programs.[14] While the Exchanges do not expect that corporate issuers will use the sale of put options to buy all the securities that are covered by their repurchase programs, the Exchanges believe that FLEX Equity options without position limits will at least provide issuers with a meaningful alternative.

The Exchanges believe that making the exchange-traded options market more accessible to large investors will create more ''complete'' markets and thereby better serve investors and issuers. In addition, the Exchanges believe that institutional investors, large individual investors, and corporate issuers repurchasing their own shares will find FLEX Equity options without position limits extremely attractive. Moreover, the Exchanges note that such activity will occur in the regulated, transparent domestic FLEX Equity options markets rather than in the less transparent OTC market or an offshore

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[6] See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Lvette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation (''Division''), Commission, dated February 3, 1997 (''Amex Amendment No. 1''). In Amex Amendment No. 1, the Amex amended its rule filing to eliminate position and exercise limits for FLEX Equity options under a two-year pilot program and revised the proposed text of Amex Rule 906G to include a reporting requirement and the ability of the Amex to impose higher margin requirements and/or to assess capital charges.

[7] See letter from Timothy H. Thompson, Senior Attorney, CBOE, to Sharon Lawson, Division, Commission, dated May 13, 1997 (''CBOE Amendment No. 1''). In CBOE Amendment No. 1, the CBOE amended its rule filing to eliminate position and exercise limits for FLEX Equity options under a two-year pilot program and revised the proposed text of CBOE Rule 24A.7 to include a reporting requirement and the ability of the CBOE to impose higher margin requirements and/or to assess capital charges.

[8] See Securities Exchange Act Release Nos. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (File Nos. SR–CBOE–95–43 and SR–PSE–95–24), and 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996) (File No. SR–Amex–95–57).

[9] See, *e.g.,* Amex Rules 900G through 909G. At the time of their FLEX Equity option proposals, the Amex and the CBOE had already secured Commission approval to list and trade FLEX options on several broad-based market indexes market indexes composed of equity securities (''FLEX Index options''). *See, e.g., Securities Exchange Act Release Nos. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993) (Order approving the trading of FLEX Index options on the Major Market, Institutional, and S&P MidCap Indexes) (File No. SR–Amex–93–05), and 34052 (May 12, 1994), 59 FR 25972 (May 18, 1994) (order approving the trading of FLEX Index options on the Nasdaq 100 Index) (File No. SR–CBOE–93–46).*

[10] See, *e.g.,* Amex Rule 915 which contains initial listing standards for a security to be eligible for options trading. In addition, the Exchanges may trade FLEX options on any options-eligible security regardless of whether standardized Non-FLEX options overlie that security and regardless of whether such Non-FLEX options trade on the Exchanges.

[11] An American-style option is one that may be exercised at any time on or before the expiration date. A European-style option is one that may be exercised only during a limited period of time prior to expiration of the option. A capped-style option is one that is exercised automatically prior to expiration when the cap price is less than or equal to the closing price of the underlying security for calls, or when the cap price is greater than or equal to the closing price of the underlying security for puts.

[12] The expiration date of a FLEX Equity option cannot, however, fall on a day that is on, or within two business days of, the expiration date of a Non-FLEX Equity option.

[13] Position and exercise limits for FLEX Equity options are set forth below as compared to existing limits for Non-FLEX Equity options on the same underlying security.

Non-FLEX Equity position limit
4,500 contracts.
7,500 contracts.
10,500 contracts.
20,000 contracts.
25,000 contracts.
FLEX Equity position limit
13,500 contracts.
22,500 contracts.
31,500 contracts.
60,000 contracts.
75,000 contracts.

The Commission notes that there is no aggregation of positions or exercises in FLEX Equity options with positions or exercises in Non-FLEX Equity options for purposes of the limits.

[14] The Commission notes that issuers would, of course, need to comply with all applicable provisions of the federal securities laws in conducting their share repurchase programs.

market which do not come under Commission oversight.

Finally, the Exchanges have represented that they intend to implement increased surveillance and reporting procedures in order to ensure an enhanced monitoring of the uses and risks associated with both the elimination of position limits and the underlying strategies resulting in such increased positions. Specifically, whenever a member files a report with an exchange (indicating that an account is carrying a position in excess of three times the standardized option position limit or that class), the Options Clearing Corporation (''OCC'') will be asked to perform a risk evaluation of the account and its position. If OCC's risk evaluation indicates a cause for concern, the exchange will notify the member carrying the account and assess the circumstances of the transactions along with the firm's view of the exposure of the account, as well as determine whether the account is approved and suitable for the strategies being utilized. According to the Exchanges, this monitoring of accounts should provide the information necessary to determine whether additional margin and/or capital charges should be imposed. Similarly, the adoption of the Exchanges' proposals under a two-year pilot period, with a status report provided to the Commission after one-and-a-half years, should enable the Commission to assess the effects on the markets of the elimination of position and exercise limits on FLEX Equity options.

IV. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) (5). Specifically, the Commission believes that the rule proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule changes are consistent with Section 11A of the Act in that the elimination of position and exercise limits for FLEX Equity options allows the Exchange to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets. The attributes of the Exchanges' options markets versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC for all contracts traded on the Exchanges.

While the Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits, the Commission is willing to approve the two-year pilot program for FLEX Equity options for several reasons. First, the FLEX Equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX Equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, all of the Exchanges' other current rules and provisions governing FLEX Equity options remain applicable.[15] Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed eliminated of position and exercise limits for FLEX Equity options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Finally, the Exchanges' surveillance programs will be applicable to the trading of FLEX Equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchanges have adopted important safeguards that will allow them to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. The Exchanges require each member or member organization (other than a Specialist, a Registered Options Trader, a Market Maker, or a Designated Primary Market Maker) that maintains a position on the same-side of the market in excess of three times the position limit level established pursuant to the applicable exchange rule for Non-FLEX Equity options of the same class, to report information to the exchange regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account.[16] By monitoring accounts in excess of three times the Non-FLEX Equity option position limit in this manner, the Exchanges should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchanges to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

Given the size and sophisticated nature of the FLEX Equity options market, along with the new reporting and margin requirements, the Commission believes that eliminating position and exercise limits for FLEX Equity options for a two-year pilot period should not substantially increase manipulative concerns. Nevertheless, the Commission will be able to assess the effects on the markets of the Exchanges' proposals during the two-year pilot period. If problems were to arise during such pilot period, the Commission believes that the enhanced market surveillance of large positions should help the Exchanges to take the appropriate action in order to avoid any manipulation or market risk concerns.

Preliminarily, the Commission believes that it is reasonable to treat FLEX Equity options differently than regular standardized options. FLEX options compete directly with OTC options. The Commission believes that it would be beneficial to attract OTC activity back to a more transparent market with a clearinghouse guarantee. Hence, a liberalization of position limits for FLEX Equity options is a measured deregulatory means to enable the Exchanges to compete with the OTC market while preserving important oversight safeguards.

In summary, because of the special nature of the Flex Equity markets, the Commission believes that the Exchanges' proposals should be approved. Nevertheless, because this is the first time the Commission has agreed to eliminate position and exercise limits for a derivative product, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Equity options. To address this concern, the

[15] See, *e.g.*, Amex Rules 900G through 909G.

[16] The Exchanges also require that an updated report be filed when a change in the options position occurs or when a significant change in the hedge of that position occurs.

Commission has approved the proposals for a two-year pilot period. The Exchanges will undertake to monitor, among other things, open interest and potential adverse market effects and to report to the Commission on the status of the program no later than eighteen months after the order's date of effectiveness. The reporting of the Exchanges' experiences should include, among other things, such information as: (i) The type of strategies used by FLEX Equity options market participants and whether FLEX Equity options are being used in lieu of existing standardized equity options; (ii) the type of market participants using FLEX Equity options both before and during the pilot program, including how the utilization of FLEX Equity options has changed; (iii) the average size of the FLEX Equity option contract both before and during the pilot program, the size of the largest FLEX Equity option contract on any given day both before and during the pilot program, and the size of the largest FLEX Equity option held by any single customer/member both before and during the pilot program; and (iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard position limit. Finally, the Commission expects the Exchanges to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission finds good cause to approve Amex Amendment No. 1 and CBOE Amendment No. 1 to the proposed rule filings prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by restricting the elimination of position and exercise limits for FLEX Equity options to a two-year pilot period, as well as requiring members holding large positions to report such positions to the Amex and to the CBOE, the proposed rule changes are more restrictive than the original proposals, which are published for the entire twenty-one day comment period and generated no responses. In addition, by authorizing the Amex and the CBOE to impose margin and/or assess capital charges, the Commission believes that the Amex and the CBOE have established important safeguards to address concerns regarding potential manipulation or other market disruptions. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amex Amendment No. 1 and CBOE Amendment No. 1 to the proposed rule changes on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amex Amendment No. 1 and CBOE Amendment No. 1 to the rule proposals. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal offices of the Amex and the CBOE. All submissions should refer to File Nos. SR–Amex–96–19 and SR–CBOE–96–79 and should be submitted by October 7, 1997.

V. Conclusion

For the foregoing reasons, the Commission finds that the Exchanges' proposals to eliminate position and exercise limits for FLEX Equity options for a two-year pilot period, as amended, 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,[17] that the proposed rule changes (SR–Amex–96–19), SR–CBOE–96–79 and SR–PCX–97–09), as amended, are approved on a pilot basis until September 9, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24443 Filed 9–15–97; 8:45 am]

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[17] 15 U.S.C. 78s(b)(2) (1988).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39035; File No. SR–Amex–97–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170.01 Relating to Specialists Establishing a Position in Specialty Stocks

September 9, 1997.

I. Introduction

On February 24, 1997, the American Stock Exchange, Inc. (''Amex'' 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] the proposed rule to change to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit specialists approval when establishing or increasing a position in their specialty stocks.[3] Notice of the filing appeared in the **Federal Register** on May 12, 1997.[4] No comment letters were received concerning the proposed rule change. This order approves the Amex's proposal.

II. Description of the Proposal

The Amex, pursuant to Rule 19b–4 of the Act, proposes to amend Amex Rule 170.01 (''Rule'') to remove certain restrictions on specialists' ability to establish or increase their positions in their specialty stocks.

Purpose

Amex Rule 170 governs specialists' dealings in their specialty stocks. In particular, Amex Rule 170.01 describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are ''reasonably necessary to render the specialist's position adequate to'' the needs of the market. Additionally, these types of transactions require floor official approval unless they are conducted in ''less active markets'' where such transactions are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.[5] Currently, such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 38573 (May 5, 1997).

[4] FR 25984 (May 12, 1997).

[5] See Amex Rule 104.10(5)(i).

restrictions apply equally to transactions that are beneficial to the market by being against the market trend and those that are disadvantageous to the market by being with the market trend. The Exchange is proposing to apply these restrictions only to those transactions that are disadvantageous to the market by being with the market trend.

Specifically, Amex Rule 170 provides that a specialist is affirmatively required to engage in a course of dealings for his own account to minimize order disparities and contribute to continuity and depth in the market, and is precluded from trading for his own account unless such dealing is necessary for the maintenance of a fair and orderly market. The price trend of a security should thus be determined by incoming orders rather than the specialist's proprietary dealings.

Commentary .01 to Amex Rule 170 sets forth specific requirements which are applicable when a specialist is establishing or increasing a position, and provides that a specialist should effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of his position to meet the immediate and reasonably anticipated needs of the market. In particular, Amex Rule 170.01(a) prohibits a specialist from purchasing stock at a price above the last sale in the same trading session, without Floor Official approval. Amex Rule 170.01(b) provides that a specialist must obtain Floor Official approval prior to effecting the purchases of all or substantially all the stock offered on the book at a price equal to the last sale, when such offer represents all or substantially all the stock offered in the market. Amex Rule 170.01(c) provides that a specialist similarly must obtain Floor Official approval prior to supplying all or substantially all the stock bid for on the book at a price equal to the last sale. Amex Rule 170.01(d) requires the specialist to re-offer or re-bid where necessary after effecting the transactions described in paragraphs (a), (b) and (c) of the Rule.

The Amex states that the restrictions contained in paragraphs (b) and (c) of the Rule were intended to strike a balance between protecting the auction market from unnecessary specialist trading and providing immediate liquidity to orders that come to the Floor. The Floor Official's function, at the time Rule 170 was adopted, was to operate as a control mechanism to ensure that the specialist did not trade unnecessarily.

The Amex contends that although the need to obtain Floor Official approval was reasonable in the past, before technology enabled markets to move quickly within seconds, it now has the effect, under certain circumstances, of reducing liquidity and disadvantaging orders entered with the specialist. Accordingly, the Exchange proposes to amend Amex Rule 170.01 to provide that a specialist is not required to obtain Floor Official approval with respect to the purchase, on a zero minus tick, of stock offered on the book, or the sale, on a zero plus tick, of stock bid for on the book. A specialist is the buyer and seller of last resort, and is expected to step in when there is a disparity between supply and demand. In this situation, the Amex contends that a specialist would only be purchasing the stock offered because there is inadequate demand for the stock.

In addition, the Amex contends that with the advent of improved technology, the Exchange's surveillance systems can now provide an adequate substitute for Floor Official Approval in such circumstances. In the last few years, the Exchange has developed an automated computer program which identifies each instance in which a specialist crosses the market (i.e., buys on the offer and sells on the bid). Each of these situations can then be individually reviewed by the Exchange Trading Analysis staff to determine whether the specialist was acting appropriately. With respect to the proposed rule change, the Exchange staff would look at how large the specialist's position was prior to the transaction, whether there were imbalances in the limit orders on the specialist's book which necessitated the transaction, and whether, if the market subsequently ''turned around'' the specialist used a reasonable amount of the inventory acquired in the transaction to offset any imbalance between supply and demand.

The Amex believes that the proposed change carves out an exception to the existing provisions, but would provide a distinct benefit to the market by permitting the specialist to satisfy a customer's order more expeditiously, while enabling the specialist to enhance the liquidity, depth and transparency of the market as the buyer or seller of last resort.

III. Commission Findings 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, with Section 6(b)(5) of the Act.[6] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest, promote efficiency, competition and capital formation.[7] The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b–1 thereunder,[8] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and Amex Rules reflect the crucial role played by specialists in providing stability, liquidity and continuity in the Exchange's auction market. Recognizing the importance of the specialist in the auction market, the Act and Amex Rules impose stringent obligations upon specialists.[9] Primary among these obligations are the requirements to maintain fair and orderly markets and to restrict specialist dealings to those that are ''reasonably necessary'' in order to maintain a fair and orderly market.[10]

The importance of specialist performance to the quality of markets was highlighted during the 1987 and 1989 market breaks. In The October 1987 Market Break Report (''1987 Report''), the Division examined specialist performance on the Amex on October 19 and 20, 1987.[11] The Division found that, during periods of the greatest volatility in 1987, particularly on October 19, 1987, Amex specialists had to act as the primary, or sometimes the only, buyers for many of the specialty stocks because of the lack of buying interest by upstairs firms.[12] The increased volume of order flow, coupled with the lack of participation on the part of the upstairs firms, resulted in Amex specialists having to take large dealer

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78(c).

[8] 15 U.S.C. 78k and 17 CFR 240.11b–1(a)(2).

[9] Rule 11b–1 under the Act, 17 CFR 240.11b–1 and Amex Rule 170.

[10] 17 CFR 240.11b–1(a)(2).

[11] See 1987 Report, February 1988 at xvii, 4–1.

[12] See 1987 Report 4–23 to 4–24 and 4–26, to 4–27. Generally, ''upstairs firms,'' or block trading desks of large broker dealers (as opposed to specialists and other traders on the Amex Floor), can, at times, provide an additional source of liquidity for Amex-listed issues through their trading activities. During the 1987 market break, however, particularly on October 19, 1987, very little buying was effected by upstairs firms, forcing specialists to be the contra-side to large blocks of stock.

positions.[13] Although many Amex specialists appeared to perform well under the adverse conditions, specialist performance during this period varied widely.

The Division also examined Amex specialist performance during the volatile conditions of October 13 and 16, 1989. The Division found that specialist performance during that time was similar in many respects to specialist performance during the 1987 market break.[14] Specifically, the Division found that, during these two periods of extreme market volatility, specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments.[15] As in October 1987, specialists as a whole on October 13, 1989 were substantial buyers in the face of heavy selling pressure, although performance varied among specialists.

Both the 1987 Report and the 1989 Analysis reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the Amex's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.[16]

The Commission recognizes that market conditions may exist at times where it is necessary or desirable to provide specialists with additional flexibility in establishing or increasing a position in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. Accordingly, the Commission believes that it is appropriate for the Amex to remove those provisions of Rule 170.01 that require floor official approval for certain specialist purchases on zero-minus ticks and specialist sales on zero-plus ticks.[17] The proposed changes may allow specialists, during periods of market volatility, to keep any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Sections 6 and 11 of the Act. The Commission emphasizes, however, that the expanded flexibility afforded to specialists by the proposal merely obviates the current required floor official approval for the affected transactions and does not reflect that all specialist purchases on zero-minus ticks and sales on zero-plus ticks are appropriate. Notably, specialists remain subject to their ''negative obligations,'' specifically, the requirement that specialists are precluded from trading for their own account unless such dealing is necessary for the maintenance of a fair and orderly market.[18]

Finally, the Commission believes that the Amex's established surveillance procedures and criteria, including the automated computer program which identifies each instance in which a specialist crosses the market, should allow the Exchange to monitor specialist compliance with Amex Rule 170.01. In addition, the Commission expects the Amex to monitor carefully compliance with the procedures of Amex Rule 170 as required under Section 19(g) of the Act.[19]

For the foregoing reasons, the Commission finds that the Amex's proposal to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit specialists when establishing or increasing a position in their specialty stocks 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, that the proposed rule change (SR–Amex–97–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24544 Filed 9–15–97; 8:45 am]

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[13] See 1987 Report at 4–48.

[14] See Market Analysis of October 13 and 16, 1989 (''1989 Analysis'') at 3–4 and 33–44.

[15] See 1987 Report at 4–8 and 1989 Report at 23–26.

[16] A specialist's dealer responsibilities consist of ''affirmative'' and ''negative'' obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and depth in the market. Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined not by specialist trading but by the movements of the incoming orders that initiate these trades.

[17] The Commission notes that Rule 170.01 currently only requires floor official approval for purchases or sales at a price equal to the last sale price when all or substantially all the stock offered/bid on the limit order book represents all or substantially all the stock offered/bid in the market. Moreover, the rule currently does not require floor official approval of such transactions if they are effected in ''less active markets'' where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

[18] In addition, Amex Rule 170.01 clearly requires that covered transactions must be reasonably necessary to render the specialist's position adequate to such needs.

[19] Section 19(g) of the Act requires every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder and its own rules.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39033; File No. SR–NASD–97–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Gross Income Assessments to Member Firms

September 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 22, 1997, 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 Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Section 1(c) to Schedule A of the NASD By-Laws (''Schedule A'') to revise the credit allowed to members against the annual assessment on their gross income. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1—Assessments

Each member shall pay an annual assessment composed of:

(a) No Change.

(b) No Change.

(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(1) Portion of assessment > $5,000 — *21%* [23%]

(2) Portion of assessment > $25,000 — *3%* [4%] additional

[1] 15 U.S.C. 78s(b)91) (1994).

(3) Portion of assessment > $50,000 — 5% additional
(4) Portion of assessment > $100,000 — *3%* [4%] additional.
* * * * *

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 Regulation, Inc. (''NASD Regulation'') has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Article VI of the NASD By-Laws, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1. NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of $1,200.00 or the total of a specified percentage of their annual gross income from securities transactions.[2] NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule.

A. The Section 1(c) of Schedule A credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The proposed rule change would amend Section 1(c) of Schedule A to decrease the credit allowed to members against the annual assessment on their gross income by an average of approximately 10%. This reduction in credit allowed to members will result in approximately $2.8 million of additional revenue in 1997 for the NASD. This action, based on the current forecast for operating costs and other revenues, should allow the NASD to fund its operating needs and achieve a balanced budget for 1997. The need for this discount rate change results from various factors, including a shortfall in the members' 1996 reported gross revenues subject to this assessment, as well as incremental costs associated with various computer and technology related initiatives and various personnel programs.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[3] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule reasonably provides for an equitable reduction in the tiered discount structure applied to the gross revenue assessment.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective on August 22, 1997, pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (e) of Rule 19b–4[5] thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 file number SR–NASD–97–62 and should be submitted by October 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24444 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of $1,200.00 or the total of: (i) 0.125% of the annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of the annual gross revenue from U.S. Government securities transactions, and; (iv) with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

[3] 15 U.S.C. 78*o*–3(b)(5) (1994).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1994).

[5] 17 CFR 240.19b–4 (1997).

[6] 17 CFR 200.30–3(a)(12) (1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39043; File No. SR–NASD–97–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD's Public Disclosure Program

September 10, 1997.

I. Introduction

On February 11, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 proposal to adopt NASD Rule 2280, ''Investor Education and Protection,'' which will require certain NASD members to provide customers with the following items of information in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

writing not less than once every calendar year: (1) The NASD Regulation (''NASDR'') Public Disclosure Program (''Program'') hotline number; (2) the NASDR web site address; and (3) a statement regarding the availability to the customer of an investor brochure that includes information describing the Program.

The proposed rule change was published for comment in the **Federal Register** on February 25, 1997.[3] Two comment letters were received regarding the proposal.[4] On July 31, 1997, the NASD amended its proposal.[5] This order approves the NASD's proposal, as amended.

II. Description of the Proposal

Under the NASDR's Program, NASDR provides certain information regarding the disciplinary history of NASD members and their associated persons in response to written inquiries, electronic inquiries or telephonic inquiries via NASDR's toll-free telephone listing. At the request of the Honorable Edward J. Markey, the General Accounting Office (''GAO'') in 1995 reviewed the effectiveness of the toll-free telephone information service that the NASDR uses to disseminate information under the Program. In its report reviewing the Program, the GAO recommended that NASDR publicize and educate investors about the availability of information through the Program.[6] Specifically, the GAO recommended that NASDR ''explore other ways of publicizing the hotline to a wider audience of investors, such as including the hotline number on account-opening documents or account statements, and making disciplinary-related information directly available to investors through the Internet.'' [7]

NASD Rule 2280(a) will require NASD members that carry customer accounts to provide customers with the following items of information in writing not less than once every calendar year: (1) The NASDR Program hotline number; (2) the NASDR web site address; and (3) a statement regarding the availability to the customer of an investor brochure that includes information describing the Program. NASD members may include the required information on customer account statements or in another type of publication. Under NASD Rule 2280(b), members that do not carry customer accounts and do not hold customer funds or securities are exempt from the requirements of NASD Rule 2280(a).[8]

III. Summary of Comments

Two comment letters were received regarding the filing.[9] Both commenters are introducing brokers that do not carry customer accounts or hold customer funds or securities. The commenters stated that because they do not provide customer account statements or correspond directly with their customers, compliance with the proposal would require a special annual mailing that would impose significant costs on their firms. In particular, MML argued that it would spend approximately $1 million annually to comply with the proposal.[10] In response to the commenters' concerns, the NASD indicated that it would advise the commenters that they could comply with the proposal by providing information about the Program to the customer at the time of the customer's purchase.[11] Amendment No. 1, which exempts from the rule brokers that do not carry customer accounts and do not hold customer funds or securities, supersedes the NASD's June 18 Letter.

IV. 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 the NASD, and, in particular, with the requirements of Section 15A(b)(6)[12] and 15A(i).[13] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Section 15A(i) requires the NASD to: (1) Establish and maintain a toll-free telephone listing to receiving inquiries regarding disciplinary actions involving the NASD's members and their associated persons; and (2) promptly respond to such inquiries in writing. By requiring broker-dealers that carry customer accounts to provide customers, at least once each calendar year, with written information regarding the NASDR Program hotline number, the NASDR's web site address, and a statement regarding the availability of an investor brochure describing the Program, the proposal will help to publicize the availability of the NASDR's Program and may increase investor use of the Program. As a result of increased investor use of the Program, a greater number of investors will obtain information about the disciplinary histories of NASD members and their associated persons. This information will help investors determine whether to conduct, or to continue to conduct, business with a NASD member or associated person of the member.

The Commission finds that Amendment No. 1 to the proposal is reasonable and consistent with the Act. Amendment No. 1 exempts from the proposal brokers that do not carry customer accounts and do not hold customer funds or securities. The Commission believes that it is reasonable to exempt such brokers from the proposal because, according to the commenters, the proposal's requirements would impose significant costs on such brokers. In addition, the Commission understands that the customers of brokers that do not carry customer accounts and do not hold customer funds or securities will receive the information required under the proposal from a clearing broker or from the broker that carries the customer's account.[14]

The Commission finds good cause for approving Amendment No. 1 the proposal prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the Commission finds that Amendment No. 1 strengthens the NASD's proposal by ensuring that the proposal does not impose prohibitive expenses on broker-dealers that do not carry customer accounts and do not hold customer funds or securities.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No.

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[3] See Securities Exchange Act Release No. 39291 (February 14, 1997), 62 FR 8477.

[4] See Letter from Daniel D. McConnell, Executive Vice President, PFS Investments, Inc., to Jonathan G. Katz, Secretary, SEC (May 14, 1997) (''PFS Letter''); Letter from Michael A. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., to Jonathan G. Katz, Secretary, SEC (March 14, 1997) (''MML Letter'').

[5] See Letter from Craig L. Landauer, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC (July 31, 1997) (''Amendment No. 1''). Amendment No. 1 exempts from the requirements of the proposal NASD members that do not carry customer accounts and do not hold customer funds or securities.

[6] See GAO, *NASD Telephone Hotline: Enhancements Could Help Investors Be Better Informed About Brokers' Disciplinary Records* (August 1996) (''GAO Report'').

[7] *Id.* at 18.

[8] See Amendment No. 1, *supra* note 5.

[9] See PFS Letter and MML Letter, *supra* note 4.

[10] See MML Letter, *supra* note 4.

[11] See Letter from Craig L. Landauer, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, SEC (June 18, 1997) (''June 18 Letter'').

[12] 15 U.S.C. 78o–3(b)(6) (1988).

[13] 15 U.S.C. 78o–3(i) (1988 & Supp. 1992). In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] Telephone conversation among John Ramsey, NASDR, and Craig Landauer, Associate General Counsel, NASDR, and Katherine England, Assistant Director, Division, Commission, and Yvonne Fraticelli, Attorney, Division, Commission, on September 9, 1997.

1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–10 and should be submitted by October 7, 1997.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–97–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24542 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39036; File No. SR–NYSE–97–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(5) Relating to Specialists Establishing a Position in Specialty Stocks

September 9. 1997.

I. Introduction

On March 25, 1997, the New York Stock Exchange, Inc. (''NYSE'' 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] the proposed rule change to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit the ability of specialists to engage in such transactions when establishing or increasing a position in their specialty stocks.[3] Notice of filing appeared in the **Federal Register** on May 12, 1997.[4] No comment letters were received concerning the proposed rule change. This order approves the NYSE's proposal.

II. Description of the Proposal

The NYSE, pursuant to Rule 19b–4 of the Act, proposes to amend NYSE Rule 104.10(5)(i) to remove certain restrictions on specialists' ability to establish or increase their positions in their specialty stocks.

Purpose

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(5)(i) describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are ''reasonably necessary to render the specialist's position adequate to'' the needs of the market. Additionally, these types of transactions require floor official approval unless they are conducted in ''less active markets'' where such transactions are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.[5] Currently, such restrictions apply equally to transactions that are beneficial to the market by being against the market trend. The Exchange is proposing to apply these restrictions only to those transactions that are disadvantageous to the market by being with the market trend.

Specifically, the revision to NYSE Rule 104.10(5)(i)(B) would continue to prohibit a specialist from establishing or increasing his or her long position by purchasing more than 50% of the stock offered for sale in the market on a zero-plus tick (i.e., at a price equal to the last sale and above the previous different price sale).[6] There would no longer, however, exist an express restriction on purchasing stock on a zero-minus tick to establish or increase a position. The NYSE believes that purchases on zero-minus ticks are against the market trend and are perceived as being beneficial to the market.[7]

Paragraph (C) of NYSE Rule 104.10(5)(i) would be deleted to permit a specialist to establish or increase his or her short position by selling stock to the bid without restriction on a zero-plus tick. The NYSE believes that these transactions are beneficial to the market by being against the market trend in nature. Short sales on zero-minus ticks will continue to be prohibited pursuant to SEC Rule 10a–1 under the Act and Exchange Rule 440B.[8]

The proposed amendments are intended to enhance the specialist's ability to deal for his or her own account to provide support to the market. Under the proposed rule change, specialists will, to a greater degree, be able to counter the market trend in a stock through effecting proprietary transactions that are against the market trend. The NYSE believes that in today's markets, characterized by increased volatility and institutional activity, the use of dealer capital in this fashion can add liquidity in a manner beneficial to the market.

III. Commission Findings 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, with Section 6(b)(5) of the Act.[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest, promote efficiency, competition and capital formation.[10] The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b–1 thereunder,[11] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and NYSE Rules reflect the crucial role played by specialists in

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[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 38574 (May 5, 1997).

[4] 62 FR 25984 (May 12, 1997).

[5] See NYSE Rule 104.10(5)(i).

[6] A plus tick is a price above the price of the last preceding sale.

[7] A minus tick is a price below the price of the last preceding sale.

[8] Long sales on zero-minus ticks would not be deemed ''to establish or increase a position.'' Rather, such sales are deemed liquidating transactions and are addressed by NYSE Rule 104.10(6). See Securities Exchange Act Release No. 31797 (January 29, 1993) 58 FR 7277 (February 5, 1993) (approval order permitting specialists to ''reliquify'' a dealer position by selling long on a zero-minus tick or by purchasing to cover a short position on a zero-plus tick without Floor Official approval).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78(c).

[11] 15 U.S.C. 78k and 17 CFR 240.11b–1(a)(2).

providing stability, liquidity and continuity in the Exchange's auction market. Recognizing the importance of the specialist in the auction market, the Act and NYSE Rules impose stringent obligations upon specialists.[12] Primary among these obligations are the requirements to maintain fair and orderly markets and to restrict specialist dealings to those that are ''reasonably necessary'' in order to maintain a fair and orderly market.[13]

The importance of specialist performance to the quality of markets was highlighted during the 1987 and 1989 market breaks. In The October 1987 Market Break Report (''1987 Report''), the Division examined specialist performance on the NYSE on October 19 and 20, 1987.[14] The Division found that, during periods of the greatest volatility in 1987, particularly on October 19, 1987, NYSE specialists had to act as the primary, or sometimes the only, buyers for many of the specialty stocks because of the lack of buying interest by upstairs firms.[15] The increased volume of order flow, coupled with the lack of participation on the part of the upstairs firms, resulted in NYSE specialists having to take large dealer positions.[16] Although many NYSE specialists appeared to perform well under the adverse conditions, specialist performance during this period varied widely.

The Division also examined NYSE specialist performance during the volatile conditions of October 13 and 16, 1989. The Division found that specialist performance during that time was similar in many respects to specialist performance during the 1987 market break.[17] Specifically, the Division found that, during these two periods of extreme market volatility, specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments.[18] As in October 1987, specialists as a whole on October 13, 1989 were substantial buyer in the face of heavy selling pressure, although performance varied among specialists.

Both the 1987 Report and the 1989 Analysis reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the NYSE's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.[19]

The Commission recognizes that market conditions may exist at times where it is necessary or desirable to provide specialists with additional flexibility in establishing or increasing a position in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. Accordingly, the Commission believes that it is appropriate for the NYSE to remove those provisions of Rule 104.10(5)(i) that require floor official approval for certain specialist purchases on zero-minus ticks and specialist sales on zero-plus ticks.[20] The proposed changes may allow specialists, during periods of market volatility, to keep any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Sections 6 and 11 of the Act. The Commission emphasizes, however, that the expanded flexibility afforded to specialists by the proposal merely obviates the current required floor official approval for the affected transactions and does not reflect that all specialist purchases on zero-minus ticks and sales on zero-plus ticks are appropriate. Notably, specialists remain subject to their ''negative obligations,'' specifically, the requirement that specialists are precluded from trading for their own account unless such dealing is necessary for the maintenance of a fair and orderly market.[21]

Finally, the Commission believes that the NYSE's established surveillance procedures and criteria should allow the Exchange to monitor specialist compliance with NYSE Rule 104.10(5)(i). More specifically, the Commission expects the NYSE to monitor carefully compliance with the procedures of NYSE Rule 104 as required under Section 19(g) of the Act.[22]

For the foregoing reasons, the Commission finds that the NYSE's proposal to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit specialists when establishing or increasing a position in their specialty stocks 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, that the proposed rule change (SR–NYSE–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24543 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–M

[12] Rule 11b–1 under the Act, 17 CFR 240.11b–1 and NYSE Rule 104.

[13] 17 CFR 240.11b–1(a)(2).

[14] See 1987 Report, February 1988 at xvii, 4–1.

[15] See 1987 Report, 4–23 to 4–24 and 4–26, to 4–27. Generally, ''upstairs firms,'' or block trading desks of large broker dealers (as opposed to specialists and other traders on the NYSE Floor), can, at times, provide an additional source of liquidity for NYSE-listed issues through their trading activities. During the 1987 market break, however, particularly on October 19, 1987, very little buying was effected by upstairs firms, forcing specialists to be the contra-side to large blocks of stock.

[16] See 1987 Report at 4–58.

[17] See Market Analysis of October 13 and 16, 1989 (''1989 Analysis'') at 3–4 and 33–44.

[18] See 1987 Report at 4–8 and 1989 Report at 23–26.

[19] A specialist's dealer responsibilities consist of ''affirmative'' and ''negative'' obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and deputy in the market. Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined not by specialist trading but by the movements of the incoming orders that initiate these trades.

[20] The Commission notes that Rule 104.10(5)(i) currently only requires floor official approval for purchases or sales at a price equal to the last sale price when all or substantially all the stock offered/bid on the limit order book represents all or substantially all the stock offered/bid in the market. Moreover, the rule currently does not require floor official approval of such transactions if they are effected in ''less active markets'' where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

[21] In addition, NYSE Rule 104.10(5)(i) clearly requires that covered transactions must be reasonably necessary to render the specialist's position adequate to such needs.

[22] Section 19(g) of the Act requires every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder and its own rules.

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #2965: State of Michigan, Amendment #2

In accordance with information received from the Federal Emergency Management Agency dated September 4, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to September 23, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is April 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 8, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–24510 Filed 9–15–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–061]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: The meeting of NOSAC will be held on Thursday, October 23, 1997 from 8:30 a.m. to 2:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before October 9, 1997.

ADDRESSES: The NOSAC meeting will be held at Transocean Offshore Inc., 4 Greenway Plaza, Room C100, Houston, Texas. Written material and requests to make oral presentations should be sent to Captain R.L. Skewes, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain R.L. Skewes, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone (202) 267–0214, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Progress report from the Subcommittee on Pipeline. Free Anchorages for Mobile Offshore Drilling Units (MODUs), Liftboats and Vessels.

(4) Status report on revision of 33 CFR Subchapter ''N'', Outer Continental Shelf Regulations.

(5) Status report on the Final Rule of 46 CFR Subchapter ''L'' on Offshore Supply Vessels (OSVs) and Liftboats.

(6) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(7) Status report from Safety Regulatory Reform Subcommittee.

(8) Report from subcommittee on Big ''L'' OSVs, Crew Boats, Alternate Tonnage and Licensing of OSVs.

Procedural

The meeting is open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than October 9, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than October 9, 1997. If you would like a copy of your material distributed to each member of the Committee or Subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 9, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant to the Executive Director as soon as possible.

Dated: September 10, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–24571 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28895]

Airport Privatization Pilot Program: Application Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final application procedures.

SUMMARY: Section 149 of the Federal Aviation Authorization Act of 1996 establishes an airport privatization pilot program, and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. A request for participation in the airport privatization pilot program will be initiated by the filing of either a preliminary or final application for exemption with the FAA. This statement identifies the issues the Department will consider in granting exemptions and approving the transfer of a public use airport under the program; it also describes the application procedures to be used by interested public airport sponsors and private parties to apply for an exemption under the program.

DATES: This policy is effective on publication. With exception noted below, preliminary and final applications for exemption will be accepted or after December 1, 1997, and will be handled on a first-come first-served basis until the limits of section 47134 are reached. An otherwise qualifying preliminary or final application for exemption will be accepted before December 1, 1997, if the sponsor has issued, on or before the date of publication of this notice, a formal solicitation or request for proposals for the sale or lease of an airport. All applications will be evaluated in the order of receipt.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano Manager, (202–267–8728) or Kevin C. Willis (202–267–8741) Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591,

SUPPLEMENTARY INFORMATION:

Introduction and Background

This notice of application procedures to be used by applicants for an airport privatization project is being published pursuant to section 149 of the Federal Aviation Administration Authorization Act of 1996, Public Law 104–264 (October 9, 1996) (1996 Reauthorization Act), which adds a new section 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

In addition to identifying the application procedures, this notice discusses the issues the FAA will consider in determining whether to approve an application for an exemption under section 47134 and other Federal requirements for airport operation. The term ''public sponsor'' is used in this document to mean the governmental agency or authority that currently owns or operates a public airport and proposes to sell or lease it to a private purchaser or lessee. The term ''private operator'' is used to refer to a private firm or firms that propose to purchase or lease a public airport under the program; the term ''applicant'' means all of the parties jointly participating in the application for privatization of a particular airport.

Requirements for Transfer of a Federally-Assisted Public Airport

A request for transfer of the operation of an airport from an existing public sponsor to a new operator, whether public or private, requires FAA approval. The request for exemption under § 47134 would be considered in conjunction with existing approval requirements and processes.

Grant/Deed Conditions

Airport sponsors receiving Federal assistance under a grant program or through donation of surplus property agree as a condition of the assistance to obtain FAA approval before transferring control or ownership of the airport to another party. For example, Assurance No. 5.b. in the Airport Improvement Program (AIP) grant agreements provides that a sponsor will not sell, lease, or otherwise transfer any part of its title or other interests in the airport property subject to the grant assurances, for the duration of the term of the grant agreement, without approval by the Secretary. Assurance No. 5 further provides that the sponsor and the transferee approved by the Secretary shall insert in the contract or document transferring the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in the sponsor's grant agreement. Similar conditions are written into the deeds of conveyance for Federal surplus property donated to an airport sponsor.

The FAA expects that applications will include a statement that the new owner/operator will assume the obligations of the original sponsor under existing grant agreements or deeds. The FAA will consider whether the new owner/operator has the powers and authority to fulfill its obligations under the assurances.

Regulatory Requirements

An operator of an airport receiving air service by aircraft with more than 30 passenger seats must hold an FAA operating certificate under 14 C.F.R. Part 139. Authority to certificate airports served by aircraft with 9 or more passenger seats was granted to the FAA in the 1996 Reauthorization Act. FAA operating certificates are not transferable; a new operator of a certified airport must obtain a new certificate issued by the FAA.

Section 47134

Section 47134 contains specific provisions for issuance of an exemption in connection with a transfer of airport operation. These conditions supplement and to some extent overlap the factors that FAA would consider under Assurance No. 5.b., but do not replace other requirements for approval of an airport transfer. In summary, section 47134(c) provides that the Administrator may issue exemptions to a public sponsor and a private sponsor only if the Administrator finds that the sale or lease agreement contains provisions satisfactory to the Administrator to ensure that:

(1) The airport will continue to be available for public use on reasonable terms and conditions without unjust discrimination;

(2) The operation of the airport will not be interrupted if the private operator experiences bankruptcy or other financial difficulty;

(3) The private operator will ''maintain, improve, and modernize'' airport facilities through capital investments, and submit a plan for these actions;

(4) Airport fees imposed on air carriers will not increase faster than inflation unless a higher amount is approved by at least 65 percent of the air carriers using the airport and the air carriers having at least 65 percent of the landed weight of aircraft at the airport;

(5) The percentage of increase in fees imposed on general aviation operators will not exceed the percentage increase in fees imposed on air carriers;

(6) Safety and security will be maintained ''at the highest possible levels;''

(7) Adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport;

(8) Adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport; and

(9) Any collective bargaining agreement that covers airport employees and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.

In addition, the Administrator must find that the transfer will not result in unfair and deceptive trade practices or unfair methods of competition, and that the interests of general aviation users are not adversely affected.

Number of Participating Airports

In establishing the privatization pilot program, Congress placed limitations on the number and kind of airports eligible to participate. Paragraph 4713(d)(1) provides that if the applications of 5 airports are approved, then at least one must be a general aviation airport. Paragraph 4713(d)(2) provides that no more than one of the airports approved may be an airport with more than 1 percent of total passenger boardings (a large hub airport), as defined in 49 U.S.C. 47102(10).

Notice of Proposed Application Procedures; Discussion of Comments Received

On April 22, 1997, the Federal Aviation Administration published in the **Federal Register** a Notice of Proposed Procedures entitled ''Airport Privatization Pilot Program: Application Procedures,'' proposing application procedures for public sponsor participation in the Airport Privatization Pilot Program (62 FR 19638). The notice also included a discussion of issues involved in reviewing applications and a notice of a public meeting. The agency asked for public comment by June 4, 1997. The FAA also solicited and received comments at the public meeting held on May 21, 1997. Verbatim transcripts of the meeting have been included in the docket of this proceeding.

The Agency received more than 22 written comments to the Notice of proposed application procedures. Comments were received from such organizations and individuals as; Aircraft Owners and Pilots Association, (AOPA); Air Line Pilots Association, (ALPA); Air Transport Association, (ATA); Airport Commission City and County of San Francisco; Airports Council International-North America, (ACI–NA); Airport Group International, (AGI); Allegheny County Department of Aviation; American Association of Airport Executives, (AAAE); BAA USA, Inc.; Infrastructure Management Group, (IMG); Johnson Controls; Landrum and Brown; National Air Transportation Association, (NATA); National Organization to Insure A Sound Controlled Environment, (NOISE); New York State Department of

Transportation, (NYSDOT); Sam Stuart of ProAir Partner Inc.; Public Employees Department, AFL–CIO, Reason Foundation; Scenic Hudson; Mr. Charles Spence; Stewart Park & Reserve Coalition; Transportation Trades Department, AFL–CIO (TTD).

The summary of comments is intended to represent the general divergence of industry views on various issues. It is not intended to be an exhaustive restatement of the comments received. All comments received were considered by the FAA even if not specifically identified in this summary. In addition to specific changes noted in the discussion of the issues, the FAA has made editorial changes throughout the application procedures to enhance readability and clarity. The Notice of Proposed Procedures included a discussion of issues that would be considered by the FAA in reviewing applications and granting exemptions (62 FR at 19641–19645). This notice addresses comments on that discussion, but does not repeat the separate discussion of those issues.

Application Procedures

Required Report to Congress

Comments: A number of comments suggest changes in the reporting requirement to Congress. Allegheny County Department of Aviation suggests the FAA initiate a dialogue with industry groups to identify potential measures of success to monitor and evaluate the program. Several commenters suggest that industry comments should be solicited annually and the FAA report to Congress on the efficacy of privatization and the pilot program. The Transportation Trades Department, AFL–CIO suggests that the FAA should address employee and collective bargaining relationships in the two year report to Congress; the report should address such issues as the program's effects on wages and working conditions, retention percentages, contracting out practices and other factors deemed relevant. The FAA should also consider a yearly reporting requirement to monitor the long term effect on employees.

Discussion: The law requires the FAA to provide a report to Congress on the Progress of implementation of the program no later than two years after the approval of the initial application. While the statute requires the FAA to report only on the implementation of the program, a considerable amount of effort has been undertaken to better understand the potential impacts of airport privatization. During the past year, the agency has held a number of meetings with industry leaders and trade groups, both proponents and opponents of airport privatization, both domestically and internationally. In May, 1997, the FAA and DOT conducted a public meeting to obtain public testimony on the topic.

Final Disposition: The FAA will consider the public comments received from the notice combined with the results of the May 21 public meeting and the background information provided by the industry in the development of the report to Congress. The FAA does not plan further notice and comment on the results of the program at this time, but will consider a public forum for discussion of experience under the program at an appropriate time in the future.

Resale or Lease to Third Party

Comments: ATA suggests that the FAA should establish procedures prohibiting the resale of an airport to a third party and mandating the reversion of the airport to the original public entity.

Discussion: Approval of a sale or lease under section 47134 would not eliminate the Federal obligations of the private operator under grant agreements to obtain FAA approval for a subsequent sale or lease. Therefore, a prohibition on resale or sublease is unnecessary.

Final Disposition: The final procedures do not include a prohibition on resale or subleasing of the airport.

Number of Airports in Pilot Program

Comments: Landrum and Brown, a consulting firm, requests policy clarification on the number and type of participating airports. Landrum and Brown believes that for the five airports selected for participation in the program, specific limits should be placed on each hub classification (e.g., large, medium, and small hub) to permit participation by all airport hub classifications. FAA should also provide guidelines and criteria for the development of the sponsor's request for proposal/qualifications (RFP/RFQ).

Discussion: Congress did not intend for participation in the airport privatization program to be defined according to airport hub classifications beyond those specifically identified in section 149. The conference report, for the bill which became section 149, indicates that the program should be flexible using neither size or geographical diversity as factors in the selection of airports. H.R. Rep. 104–848 at 27 (September 29, 1996).

Final Disposition: The final policy retains the original position as identified in the April 22 Federal Register notice.

Two Year Assessment Period

Comments: Allegheny County Department of Aviation suggests that the statutory two year assessment period provides as insufficient time to fully evaluate the impacts of the program. As an example, the county mentioned a typical capital development schedule can have a longer horizon than two years. If the generation of new capital and investment is a measure of performance, the two year reporting period does not provide sufficient time for determining results. The county suggests that Congress establish a longer horizon to permit a more realistic assessment of the program.

Discussion: The statute requires the FAA to submit a report to Congress not later than two years after the approval of the first application.

Final Disposition: The report to Congress will be filed 2 years from the date of the first application.

Selection Process

Comments: A number of comments suggest changes to the selection process and application submission dates. San Francisco argues that the FAA's system of ''first come first serve'' is arbitrary and unfair. San Francisco suggests that the start date of December 1, 1997, should be delayed for three months to allow applicants sufficient time to prepare an exemption application. They also suggest that the selection process be replaced by a lottery of pre-qualified applicants with five airports selected by a disinterested third party.

Johnson Controls, a private airport operator, has two concerns with the ''first come first serve'' approach. Their first concern is that the first five applications submitted may not be the most qualified to be included in the program. Second, if more than five airports submit applications for the December 1 deadline, some of those airports sponsors and their associated parties will be forced to expend a great deal of preparatory work and expense with no assurance that they will be able to obtain an exemption. As an alternative, Johnson Controls suggests a two step process. The first step requires the submittal of a preliminary application consisting of a description of the procurement process, a copy of the request for proposal (RFP) and a list of the airport owner's minimum requirements. The second step would consist of the FAA granting conditional approval for five airport sponsors to issue a RFP. A stand-by list would be utilized should one of the first five

applicants be unable to complete the process. Airport sponsors would have to request FAA approval of their final applications. This selection process is endorsed by Airports Council International North America (ACI–NA) and the American Association of Airport Executives (AAAE).

Landrum and Brown wants both the airport sponsor and private airport operator to be pre-qualified for exemption and participation in the pilot program. Airport Group International (AGI) proposes that interested airport sponsors submit an expression of interest by a date certain. The statement would include basic information about the facility and a feasibility report demonstrating that the economics of the airport can support privatization. Based upon this submittal, the FAA would select five airports best qualified for participation in the program. Exemptions would be issued upon the completion of the solicitation process.

The Reason Foundation suggests staggered start dates based upon airport classification. Under this proposal, applications for general aviation airports would be accepted from December 1 onward, but approval would be limited to a maximum of two during the initial 18 months, while awaiting for applications from air carrier airports. Large and medium hub airports could not submit an application until 18 months later, all other carrier airports would have 12 months. This type of extended schedule would provide large and medium hub airports a longer time for preparation due to the complexity of preparing a request for proposals.

Discussion: We agree with commenters that a revision of the selection procedures is warranted. The FAA drew on several different comments for development of the following two-step selection process. We continue to believe applications should be selected on a first come first served basis, rather than a selection process based on criteria not found in section 47134. First, the direction for a report to Congress within 2 years indicates an interest in early implementation of the program. A first-come first-served selection procedure is most likely to meet this objective, as would the December 1 start date for applications, rather than a date of 12 or 18 months hence. Second, section 47134 does not provide specific authority or guidance for comparative selection of eligible applications, should more than five applications be received, based on their merits as privatization projects. However, FAA agrees that a two-step process, involving both preliminary and final applications, would be beneficial because it will avoid a costly and extensive process by parties that will turn out not to be among the first five qualifying applicants. Also, the FAA agrees with the suggestion for a lottery procedure to the extent necessary to assign priority to applications received on the same day.

Final Disposition: As a first step, interested public sponsors may submit a summary preliminary application to the FAA for review and approval on or after December 1, 1997 (with certain exceptions noted below). The preliminary application will consist of: a summary narrative of the objectives of the privatization initiative; i.e., what the sponsor is trying to accomplish; second, a description of the process and timetable to be employed in selecting an operator; third, all the information required to be included in Part II of the final application; fourth, airport financial statements including balance and income statements for the last two reporting periods; and finally, a distribution ready copy of the request for proposals (RFP) that the sponsor will use in seeking a private operator.

The RFP must be specifically for the sale or lease of the airport under the § 47134 Airport Privatization Pilot Program. The document should contain references to this notice and the nine statutory objectives listed in section 47134(c). These preliminary applications will be accepted for review on a first come first served basis. The FAA will review each preliminary application and, if the preliminary application is accepted for review, the FAA will publish the status of the application in the **Federal Register**. Filing dates for applications, for the purposes of determining filing order under this program, will be the filing date of an approved preliminary application or the filing date of the final application if no preliminary application is filed. The FAA may accept up to five applications. If more than five airports submit applications, the FAA will establish a stand-by list. The FAA agrees to notify an applicant within thirty days of the filing of the preliminary application whether the application has been accepted for review.

Once a preliminary application is accepted for review, an applicant may issue its RFP, select a private operator, negotiate an agreement and submit a final application to the FAA for approval without competing with other applicants for one of the five program slots. The acceptance for review of the preliminary application is time specific and based on the time table submitted with the preliminary application. Extensions may be granted, if the FAA finds that the public sponsor is making reasonable efforts to complete the process. For applications received by the FAA on the same business day, the FAA will hold a public lottery to assign priority.

Final applications and preliminary applications will not be accepted before December 1, 1997, unless an applicant has issued an RFP on or before the date of publication of this notice. Applicants that have already issued an RFP for proposals for the sale or lease of the airport on or before the date of publication of this notice and have selected a private operator may submit a final application for review before December 1, 1997. Applicants that have issued the RFP but have not selected a private operator may file a preliminary application on or before that date. When a final application is accepted for review, the FAA will publish notice in the **Federal Register** with a 60-day comment period.

The application procedures will be modified to reflect the changes to the selection process.

Privately Owned General Aviation Airports

Comments: The State of New York recommends that privately held general aviation airports be excluded from section 47134(a) because they will not ''facilitate new forms of airport ownership'' as was intended by the statute.

Discussion: The statute provides no basis for excluding privately owned airports. Privately owned airports are currently bound by many of the same laws, regulations, and grant assurances that govern publicly owned airports. However, exemptions under the program are granted only ''to the extent necessary'' for the purposes listed in § 47134(b) (2) and (3). It is likely that no exemption would be necessary for these purposes in a sale or lease of an airport from one private owner to another, and the FAA does not anticipate that applications will be received from private sponsors or that such sponsors would qualify for an exemption under the standards of section 47134.

Final Disposition: The FAA will issue exemptions only to the extent necessary for the purposes listed in section 47134(b) (2) and (3).

Public Outreach

Comments: Several commenters requested that additional public outreach efforts be written into the procedures. NATA supports the idea of publishing the application in the **Federal Register** for the solicition of

public review and comment. AOPA wants the airport sponsor to implement measures to improve the opportunity for public comment from the airport's general aviation community. AOPA suggests that the airport sponsor be required to contact all general aviation tenants individually by mail, to the extent practical, and to post a notice in a prominent location on the airport, to notify all general aviation tenants of a pending application before the FAA. The FAA should also conduct a public hearing at each airport being considered for participation in the pilot program. Scenic Hudson, Incorporated and Stewart Park and Reserve Coalition, two community organizations with an interest in Stewart International Airport, Newburgh, New York, requested the FAA to provide notification by personal mail service to interested parties regarding the acceptance of a final application with a copy of the final application provided upon request. They also suggested that the comment period on each application be for a period of 90 days.

Discussion: The FAA supports efforts to inform the public of any expected changes affecting the airport community. However such efforts to obtain tenant participation and comment are best initiated by the airport sponsor in conjunction with local pilot groups and airport tenant and user committees.

The FAA expects that a request for Federal exemption is only one part of a complex process that will involve a considerable amount of preparatory work, will generally also require the sponsor to obtain local government legislative and other types of approval, and in some cases will require state authorization. Public participation in the process may be required before the application is submitted to the FAA. In addition, we assume that industry organizations will make their membership aware of the opportunity to comment at the appropriate level of government authority. With respect to Federal action, the names of public sponsors submitting preliminary applications will be published in the **Federal Register.** FAA will institute a 60 day comment period for public review of sponsor's final application. We believe a 60 day comment period is reasonable considering the earlier requirement for publication in the **Federal Register** of a sponsor's preliminary application. We encourage airport sponsor to augment our efforts with their local means of communicating with the general public, and we are modifying the procedures to require that applicants describe their public outreach efforts in the final application.

Final Disposition: Upon receipt of a preliminary application, the FAA will publish a notice in the **Federal Register.** When a final application is accepted for review by the FAA, the application will be published in the **Federal Register** for public review and comment for a sixty day period. The application procedures will be modified to reflect these changes and to require a description of any local public outreach efforts by the applicant.

Part II of the Application: Airport Property

Comments: Scenic Hudson and Stewart Park and Reserve Coalition request clarification of what would be considered airport property, specifically as it pertains to Stewart International Airport. The two commenters want to know who will define what is to be included as airport property and the criteria to be employed in this determination.

Discussion: The FAA agrees that property to be transferred must be clearly identified. Airport sponsors, requesting an exemption under section 47134, must provide a description of the airport property to be transferred under the pilot program. They must also provide an acquisition history of the existing airport property. The airport sponsor, as property owner, is in the best position to know the acquisition history of the airport's property and determine what property will be included as part of the transfer.

Final Disposition: Questions regarding the property of a specific airport should be directed to the airport operator.

Part III of the Application: Terms of the Transfer

Comments: ATA argues that the parties buying or leasing the airport will be interested in recouping all or part of the cost of the initial transaction. ATA recomends that the parties should provide information on the source of reimbursement for purchase or lease payments and the projected impact of the fees charged to airport users.

Discussion: We believe this information will be valuable in evaluating a public sponsor's application. And find the ATA recommendations to be reasonable.

Final Disposition: The application procedures will be changed to incorporate a requirement that the source of funds for reimbursement of the purchase or lease payments be identified, and that the applicants describe the anticipated impact of the reimbursement on aeronautical user fees.

Part IV of the Application: Qualifications of the Private Operator

Comments: San Francisco opposes the implementation of a fitness test, because such a test would tend to discriminate against private operators. Allegheny County, ATA and AGI believe that a fitness test could be a valuable exercise for the FAA to perform. Several comments express the concern that such a test should not be unduly burdensome and the investigation process should be similar to those investigations conducted for public operators. Johnson Controls emphasizes the need to crease a ''level playing field'' for both publicly operated airports and privately operated airports. FAA should not use the exemption approval process as an excuse for placing burdens on the private operator which were not imposed on the public entity previously operating the airport.

Discussion: Comments supporting the need for a fitness test, raise two concerns. First, a fitness test should not be discriminatory against private operators; any investigation process conducted should be the same for both public and private operators. Second, it should not be unduly burdensome on the operator.

Section 47134 did not change existing requirements applicable to public airport sponsors for ownership of airports or eligibility to receive Federal grants. In contrast, this section did impose new financial and other requirements for private firms undertaking the operation of a public use airport under the pilot program. Accordingly, a fitness test related to the eligibility requirements of the pilot program cannot be considered discriminatory against private operators applying for participation in the program. FAA believes a limited fitness review of private operators, modeled on information reviewed for DOT economic certification decisions, would be beneficial in ensuring that the FAA meets the requirements of section 47134. The information involved is limited to items related to this program, and will not be a burden for applicants.

Final Disposition: In addition to the information previously provided in the proposed application procedures the fitness test will require the following:

1. A private operator's airport operation and management experience.

2. The identity, experience, expertise and responsibility of key personnel.

3. A description of facilities presently being managed by the company, both domestically and internationally.

4. Copies of the 10K annual reports filed in the past 3 years with the

Securities and Exchange Commission. If not filed, balance sheet and income statement and a cash flow statement prepared in accordance with Generally Accepted Accounting Principles, with all footnotes applicable to the financial statements. The above mentioned statement shall be filed annually, ninety days after the close of the operator's fiscal year.

A finding of fitness in response to an application under this program would apply only to that application and not to other applications filed with the FAA or other offices of the Department of Transportation.

Part V of the Application: Requests for Exemption

Comments: ATA also recommends that information provided as part of the request for exemption to permit airport revenue to be used for compensation of the private operator should include anticipated amount and source of airport funds involved, and a description of the effect, if any, on air carrier or other user fees.

Discussion: This request is consistent with ATA's request for additional information requested in Part III, ''Terms of Transfer.'' Consistent with our action on that request, Part V is being modified to include this information in the application. No further action is required.

Part VI of the Application: Certification of Air Carrier Approval

Comments: ATA indicates that statistics for determining landed weight should be based on the preceding calendar year. According to the State of New York, the regulation does not address the manner in which the 65 percent air carrier rule will be calculated in the event one or more carriers announce a decision to discontinue service after the end of the year preceding application review.

Discussion: The statistics requested in paragraph B of the procedures for total landed weight must be based on the preceding calendar year. This is a requirement of the statute. Section 47134(b)(1)(i)(ii) requires 65 percent approval of the air carriers serving the airport and 65 percent approval of the total landed weight of air carriers from the preceding calendar year. Carriers discontinuing service during or after the calendar year and not currently serving the airport would not be counted in the total landed weight for the preceding calendar year. This interpretation is necessary to permit the 65 percent statutory carrier approval mechanism to work if a carrier having more than 35 percent of the landed weight at the airport discontinues service. This issue is further discussed under the heading ''Issues Considered by the FAA in Granting an Exemption Under Section 47134.''

Final Disposition: The application procedures have been modified to reflect the discussion.

Part VIII of the Application: Airport Operation and Development

Five-Year Capital Improvement Plan. Comments: The ATA suggests that information on the five-year capital plan should include, if applicable, information on sources and proposed repayment terms of any borrowed funds.

Discussion: We find this request reasonable and consistent with our request for disclosure of the source of funds in previously mentioned comments.

Final Disposition: A request for a description of this information will be incorporated into the application procedures.

Collective Bargaining Agreements

Comments: Public Employee Department, AFL–CIO requests that the labor requirements be strengthened. FAA should require the recognition of collective bargaining rights and an adherence to the collective bargaining agreement. The details of workforce standards should be identified in any lease or sale agreement. Transportation Trades Department, AFL–CIO identified a clerical error in Part VII(A)(10) of the proposed procedures. According to the statute, this section should read, ''Any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease''. The commenter suggests that the FAA should more clearly discuss what defines an abrogation of a collective bargaining agreement. The FAA should also include detailed requirements for collective bargaining agreements. The application should address successorship of existing representatives of employees, adverse impacts on civil service employees and a requirement that private operators offer employment to the existing workforce. Transportation Trades Department recommends an addition to Part VII(A)(10) requesting the applicant to determine and describe the long term effects the transfer may have on collective bargaining agreements and employees. Finally, the Transportation Trades Department suggests that the FAA should have an oversight role in the treatment of employees after the agreement is signed.

Discussion: Section 47134(c)(9) requires that any collective bargaining that covers airport employees will not be abrogated by the transfer or sale of the airport. The application procedures permit the applicants to satisfy section 47134(c)(9) by providing a certification that the collective bargaining agreement has not been abrogated. We would expect as a part of submitting the exemption application, the issues raised by labor would be the basis for discussion between the private operator, the airport owner and the collective bargaining units. Before issuing an exemption, the FAA would ensure the terms of the agreement met the requirements of the Act.

After transfer of the airport, we assume that existing federal and state agencies with responsibility for labor relations, rather than the FAA, would perform oversight functions on labor agreements at the airport. FAA's role would be limited to assuring that applicant public sponsors and private operators, in the transfer of the airport to private operation, comply with assurances of section 47134. Collective bargaining agreements and Federal labor laws establish employee rights and mechanisms for protecting employee interests. Section 47134(c)(9) is not intended to make FAA oversight an alternative process. Rather, by requiring assurance that collective bargaining agreements will not be abrogated, Congress demonstrated an intent to rely on existing devices to protect employee interests.

Final Disposition: The application procedures will be revised to more closely conform with section 47134(c)(9).

Issues Considered by the FAA in Granting an Exemption Under Section 47134 65 Percent Carrier Approval

Comments: ATA believes that procedures must be clear that air carriers approving ''diverted'' funds must constitute 65 percent in number and 65 percent in landed weight.

Discussion: In order for a public sponsor to recover funds from the sale or lease of the airport, the dollar amount must be approved by at least 65 percent of the air carriers serving the airport and at least 65 percent of the total landed weight of the air carriers serving the airport in the preceding calendar year. As discussed above, carriers that have ceased operations at the airport at the time of application will be excluded from the landed weight calculation.

Final Disposition: The final procedures are being modified to reflect this discussion.

Comments: Landrum and Brown suggest that the 65 percent carrier approval requirement is reasonable if obtained in advance of selection of operator. ATA recommends that general aviation airports be exempt from the 65 percent carrier provision rule in lieu of a similar test of the majority of based air craft owners or some other indication of the users.

The Allegheny County Department of Aviation (Allegheny County) argues that it is not appropriate to equate Part 135 operators with Part 121 air carriers, especially at general aviation airports. Allegheny County argues that air taxi operators at general aviation airports are typically fixed base operators that provide on-demand air taxi services as one of a group of aviation related activities. Typically, according to Allegheny County, these operators have not made financial commitments to the airport in the form of long-term leases and they do not commit their credit-worthiness to the financing of the general aviation airport. Allegheny County argues that the test proposed—that any Part 135 operator with at least 50 annual operations be counted in the 65 percent vote—would lead to the unfair result that an itinerant air taxi with limited financial connections to the airport would have a right to vote while a fixed base operator (FBO) located at the airport (but with no Part 135 operations) would have no vote. Allegheny County suggests that recognition as an air carrier should be based on one or more of the following tests: (1) A Part 135 operator lease is cited specifically as a security for the sponsor's financing of any airport facility; (2) a Part 135 operator is a signatory to a long term lease with airport; (3) a Part 135 operator paid to the airport within the last twelve months, landing fees for commercial flights which constituted a specified percentage of the airport's total revenues or exceeded a specified dollar amount.

After the comment period closed, Allegheny County filed a request for a complete waiver of the 65 percent approval requirement for Allegheny County Airport, on the grounds that Congress did not intend these airports to be subject to the requirement. The FAA provided the Part 135 operators with lease or use agreements at the airport with an opportunity to respond. To ensure a complete record, the FAA is including in this docket the waiver request and all responses.

The State of New York requested clarification on several aspects of the 65 percent carrier approval rule. New York believes carriers that no longer have an agreement with the airport sponsor should not participate in application approval. They also indicated that landed weight requirements should not include general aviation. Finally, the State of New York wants to know how the FAA will handle an airline, airline holding company, or an affiliate of that airline that becomes an applicant for private operation of the airport and also has participatory rights under the 65 percent carrier approval provision. The state suggests that such an airline would have an inherent conflict of interest.

Discussion: The statute requires the airport sponsor to comply with two tests regarding air carrier approval of the amount of funds the sponsor can recover as a result of the initial transaction. While the statute makes no reference to the timing of the approval, the amount of funds to be recovered cannot be determined until the actual business arrangements between the airport sponsor and a specific private operator are known. Therefore, the FAA is not adopting the Landrum and Brown suggestion.

On the question of including Part 135 air taxi operators in the 65 percent approval process, the FAA agrees that the proposed procedure would have been impractical and could have led to results that are undesirable from a policy perspective. However, we do not fully agree with Allegheny County's assessment of Congressional intent regarding Part 135 operators. Therefore, we are not adopting the modifications proposed by Allegheny County Airport. Rather, the FAA is modifying the 65 percent approval requirement to limit participation to Part 135 operators with lease and/or use agreements and with aircraft used in Part 135 operations. Itinerant Part 135 operators, even with 50 or more flights per year, would not be included.

The FAA has reviewed the provisions of section 47134, and we do not find strong evidence that Congress intended to distinguish, as a class, either Part 135 operators from Part 121 operators, or general aviation airports from commercial service airports receiving scheduled airline service. Under the terms of the statute, the public sponsor's receipt of sale or lease proceeds and fee increases exceeding the rate of inflation must be approved by at least ''65 percent of the air carriers'' serving the airport, without limitation or qualification. The term ''air carriers'' as defined in 49 U.S.C. 40102 encompasses Part 135 operators, as Allegheny County recognizes. The FAA assumes that if Congress intended to treat Part 135 operators, as a class, differently, explicit provisions authorizing or mandating different treatment would have been included.

With respect to the comment that the 65 percent approval requirement should not apply at general aviation airports, the FAA notes that section 47134(b)(1) does not expressly exclude general aviation airports from the 65 percent approval requirement. Based on the foregoing, the FAA interprets section 47134(b)(1) (and the parallel provision of section 47134(c)(4)) to reflect a Congressional intent to give Part 135 operators at general aviation airports voting rights as air carriers.

Nevertheless, the FAA recognizes that the differences in on demand Part 135 operators and Part 121 operators justify, on both practical and policy grounds somewhat different treatment.

The nature of Part 135 operator ''on-demand'' air service would place an undue burden on the airport sponsor in administering the proposed certification requirement, especially as applied to non-based operators. Many Part 135 charter operations may be invisible to airport surveillance. Many operators conduct their business with no visible markings. In many cases it may be difficult to ascertain whether an activity is being done as a commercial flight in air transportation, or as another activity under Part 91.

In addition, providing itinerant Part 135 operators with voting rights could give them more of an influence over the terms of a privatization transaction than other users of a general aviation airport who will be more substantially affected—fixed base operators without Part 135 operations. The committee report indicates that the approval provisions were added because Congress recognized ''that airport users may be concerned that an airport could use its monopoly power to increase their fees to unreasonable levels.'' Given this concern, there is not a strong policy justification for giving itinerant air taxi operators—who would likely be less impacted by the increases in airport fees relative to airport tenants—a greater influence over the terms of the privatization transaction than an entire category of airport tenants—FBOs without Part 135 operations. Moreover, an airport operator may have no practical means of determining whether an itinerant operation is conducted under Part 135 or Part 91.

Therefore, the FAA has decided to limit participation in the 65 percent approval process to Part 135 operators that have lease and/or use agreements with the airport and have aircraft used in Part 135 operations based at the airport. This resolution provides those Part 135 operators most likely to be

affected by a privatization transaction with the voting rights Congress intended, while avoiding the practical and public policy difficulties associated with extending the voting rights to itinerant operators. This resolution will provide to FBO tenants with a Part 135 certificate voting rights not shared by non-Part 135 FBOs. However, this is a distinction that is clearly contemplated by the terms of the statute.

The FAA also notes that the definition of the term ''air carrier'' in 49 U.S.C. 40102 refers to U.S. citizens, and does not include foreign air carriers. While section 40102 expressly governs Part A of Title 49, Subpart VII, and Section 47134 is in Part B of that subtitle, the FAA generally applies the definitions in section 40102 to Part B if the terms are not defined to have a different meaning in section 47102, the definition section for Part B. Section 47102 does not define ''air carrier,'' but defines ''air carrier airport'' in a manner that refers to service by U.S. carriers, which is consistent with the section 40102 definition of ''air carrier.'' Accordingly, the FAA concludes that Congress did not intend the statutory procedure for air carrier approval to include foreign air carriers in the calculation of either 65 percent of air carriers serving the airport or 65 percent of landed weight in the preceding year. The application procedures reflect this conclusion.

However, the FAA notes that this does not in any way affect existing rights of foreign air carriers with respect to reasonable and not unjustly discriminatory fees, or to the rights of foreign air carriers to use the same administrative and legal processes available to U.S. operators to challenge airport fees. Moreover, applicants are reminded that bilateral air service agreements provide for consultation with foreign air carriers. The applicant should conduct timely consultation with foreign air carriers serving the airport on all proposals for which approval is requested under section 47134(b)(1) and section 47134(c)(4), and include a description of the consultation in Part VI of the application.

Finally, the procedures exclude from the 65 percent approval process otherwise qualified air carriers that submitted proposals or that participate in consortia that submitted proposals for the privatization of the subject airport. The vote of such a carrier, whether or not it is the successful proponent, could be based on its interests as a proponent rather than its interests as a user of the airport. To the extent that it is, such a carrier's vote would not further the Congressional objective of the 65 percent approval requirement.

Final Disposition: The application procedures will be modified to reflect the above discussion. Specifically, in applying the 65 percent approval requirement, carriers serving the airport will consist of all carriers conducting operations at the airport under authority of 14 CFR Part 121 that have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year; all carriers conducting operations at the airport as a commuter air carrier within the meaning of 14 CFR Part 298 that have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year; and all operators conducting operations at the airport under authority of 14 CFR Part 135 that have a lease and/or use agreement at the airport (or similar agreement for use and occupancy of airport premises) and that have at least one aircraft used in Part 135 operations based at the airport. However, an otherwise qualified air carrier will not be permitted to participate in the 65 percent approval process, or be counted in the total landed weight in the previous year, if the air carrier, air carrier holding company, or affiliate of that air carrier responds to a solicitation or submits a proposal to serve as a private operator or participate in a private operator consortium at that airport. In addition, as proposed, an airport that does not keep records of landed weight for purposes of calculating landing fees may seek an appropriate waiver of the landed-weight approval requirement.

Terms and Conditions Required for Approval—General Approach

Comments: The State of New York, San Francisco and AGI believe that third party beneficiary rights are not necessary and may exceed FAA's authority. The State of New York believes the FAA has these rights under existing law. Landrum and Brown suggests the FAA should require the sale or lease agreement to include provisions that meet the statutory objectives. Infrastructure Management Group request clarification as to the standards and conditions under which it might completely transfer grant obligations to the private sector without subsequent recourse to the previous public sponsor.

Discussion: Section 47134(c) permits the FAA to approve an exemption application only if the sale or lease agreement includes provisions satisfactory to the FAA. The Agency considers the statutory objectives in section 47134(c) as creating a third party beneficiary rights for the United States Government. Congress has authorized the FAA to approve an application for exemption only if the lease or sale agreement contains terms and conditions that ensure the nine statutory objectives are met. To assure that these rights are available, we will require the sale or lease agreement to include provisions explicitly granting third party beneficiary rights to the FAA. The FAA will accept as an alternative a suitably structured tripartite agreement among the FAA, the public sponsor and the private operator in which the three parties agree that the key grant assurances required by section 47134 may be enforced directly against the private operator by the FAA under the agreement as well as under applicable grants.

During the course of the application process, the FAA will determine on a case by case basis, what grant obligations will be transferred. As a result of the transfer, the public sponsor should not be obligated for the airport grant assurances assumed by the private operator. However, the public sponsor may continue to have Federal obligations under the exemption approval. These Federal obligations may depend on: (1) The conditions of exemption; (2) third party beneficiary rights; and (3) specific terms of the transfer agreement.

Additionally, we are requesting sponsors to identify in the application their approach to handling the protection of the airport's runway protection zones and the acquisition and retention of avigation easements, in consideration that a private operator will have neither condemnation authority nor zoning power for adjacent property.

Final Disposition: The application procedures will be changed to incorporate the request for information on the airport's runway protection zones and avigation easements and to incorporate the requirement for third-party beneficiary rights or a tripartite agreement. None of the other comments required changes to the procedures.

Terms and Conditions To Assure Public Access on Reasonable Terms Without Unjust Discrimination

Comments: Landrum and Brown recommends that a private operator should operate an airport without discrimination under the same assurances required of a public sponsor. The State of New York argues the introduction of requirements that would hold privately operated airports to a higher than public airports would be contradictory and deterrent.

NATA opposes the ability to transfer proprietary exclusive rights to a private operator. It argues that a private operator exercising a proprietary exclusive right in an area as fuel sales, for example, will impact existing fuel operators. A proprietary exclusive operation may result in the closure of existing fixed base operators or the denial of market entry by potential new operators.

Discussion: Under existing FAA policy, the owner of a public-use airport may elect to provide any or all of the aeronautical services needed by the public at an airport. The statutory prohibition against exclusive rights does not apply to these airport owners. They may exercise, but not grant the exclusive right to conduct an aeronautical activity. Existing policy permits airport owners to engage in these services using only their employees and resources. Delegation or subcontracting of the proprietary exclusive right is prohibited. As a practical matter, public agencies recognize these services are often best performed by a profit-motivated private enterprise.

Private owners of a public use airport are currently permitted to exercise propriety exclusive rights on the same basis as public agencies. The FAA sees no reason to grant a private operator a lesser right than other operators just because the operator came into control of the airport under section 47134. However, the FAA may object in circumstances when the private operator attempts to exercise a proprietary exclusive right through consortiums, joint or limited partnerships when the intent is to circumvent the exclusive rights provision or the limited exception.

Final Disposition: FAA will review each request for proprietary exclusive on a case by case basis.

Reasonable Rates and Charges Imposed by Airport Operator

Comments: San Francisco believes the FAA lack the authority to apply the Rates and Charges Policy and that the policy should not be imposed on the transferee. It proposes that the FAA delete the provision that subject fees imposed by the private operator to the Policy on Airport Rates and Charges. San Francisco argues that under the rule, airlines already have adequate protection against unreasonable rates and charges. First: 65% of the air carriers must approve the initial agreement in the form of revenue to be retained by the airport sponsor; second, air carriers must approve all rates and charges (except for those rate increases resulting from new capital improvements). Application of the policy to the agreed upon rates and charges could result in challenges to the rate structure as new users enter the market. This could potentially undermine the investment expectations of the private operator by lowering the level of rates and charges.

Discussion: Before responding to the comments, it is necessary to discuss a judicial decision in a challenge to the Rates and Charges Policy that was pending when the FAA issued the NPP. The Air Transport Association (ATA) and the City of Los Angeles each petitioned for judicial review of the Airport Rates and Charges Policy. Los Angeles challenged the requirement to use historic cost accounting in establishing fees for the use of the airfield. The ATA challenged the provisions in the policy that permit the airport operator to: (a) Use any reasonable method to establish other aeronautical fees; and (b) charge imputed interest on the airport operator's own funds from specified sources invested in the airfield. On August 1, 1997, the United States Court of Appeals issued its opinion, which vacated an remanded the Airport Rates and Charges Policy to the Department.

The effect of the opinion on the provisions of that Policy that were not challenged is unclear. Even if the effect of the opinion is to vacate the entire policy, it is reasonable to expect that readoption of the unchallenged provisions would not be objectionable. In addition, the provisions of the policy most directly related to the privatization pilot program—provisions on airport operator/user consultation, application of the policy to fees set by agreement, and allowable rate of return to private equity owners of airports—were not challenged. Therefore, the FAA has assumed that those provisions continue to be in effect in the discussion of the comments on this issue. We have made appropriate editorial changes to the text of the procedures to reflect the uncertain status of the Airport Rates and Charges Policy.

The comment that the FAA lacks authority to apply the Rates and Charges Policy to transferees under the pilot program is not supported by the statutory language authorizing the pilot program. Section 149(d) of the Reauthorization Act, which established the privatization pilot program, also included a revision to 49 U.S.C. 47129, the existing statute which requires adoption of a DOT rates and charges policy and process for adjudication of disputes. The new provision directs the Secretary, ''in evaluating the reasonableness of a fee imposed by an airport receiving an exemption under § 47134 of this title [to] consider whether the airport has complied with section 47134(c).'' 49 USC 47129(a)(4). This provision does not exempt fees that meet the 65 percent approval requirement from review under § 47129. On the contrary, the provision contemplates that the fees will be reviewed, with consideration given to whether the fees meet the 65 percent approval requirement.

The FAA considers the Airport Rates and Charges Policy, in particular the first principle and associated guidance, and this policy to be consistent with the statutory direction discussed above. The first principle states the Department's preference for direct local negotiation between the airport operator and aeronautical users. This principle recognizes a generally held industry wide practice that produces reasonable results. The Airport Rates and Charges Policy was amended to avoid the need for investigation of complaints about the reasonableness of fees set by agreement if filed by parties to the agreement.

However, as we indicated in the Airport Rates and Charges Policy, we believe that Congress did not intend to deprive non-signatory carriers of the opportunity to have their fees reviewed by the FAA, solely because they were not a signatory to the original agreement. Section 47129 does not, by its terms, exempt fees set by agreement from the requirement of reasonableness. Furthermore a difference in rates between signatory or non-signatory carriers is not necessarily a basis for a determination of unreasonable fees. Interested parties should consult the section, ''Charges to Non-Signatory Carriers'' of the OST/FAA Policy on Airport Rates and Charges for further details.

Final Disposition: The final policy is not modified from the proposal.

Reasonable Compensation for the Airport Operator

Comments: Several commenters voiced concerns about the compensation to the private operator. Landrum and Brown suggests that the rate of return should be subjected to a reasonableness test. This should be handled on a case by case basis. Compensation is driven by the ''price'' paid for the lease or sale of the airport. The State of New York believes agreement between equity owner and airport users is most appropriate to determine charges. Infrastructure Management Group suggests that the FAA should not directly intervene on the issue of reasonable rate of return.

These issues should be left to the three consenting parties in the privatization process, the airport owner, the private operator and the airlines. The FAA would still have the authority to exercise remedying powers under its current Policy on Airport Rates and Charges. ATA argues that the private operator's rate of return must be evaluated in light of its impact on user fees, within the context of exemptions being proposed under section 47134(b)(3). The ATA encourages the FAA to ''look at all payments in the aggregate, not as individual pieces.''

Discussion: A basic premise for determining the reasonableness of compensation for the airport operator must begin with three consenting parties in the privatization process, the airport owner, the private operator and the airlines. As we have indicated, in order to protect the general public interest, and the interest of airport users affected by but not a party to the agreement, the FAA has a responsibility to determine the reasonableness of airport fees paid by aeronautical users and compensation to the airport operator included in those fees. The FAA will examine an airport operator's rate of return for reasonableness on a case by case basis. While we recognize the value of agreement on compensation to the airport operator by all consenting parties, the FAA reserves the right to ensure that the rate of return charged for aeronautical facilities and services meets the applicable reasonableness requirements.

Final Disposition: The final procedures retain the substance of the proposed procedures.

Carrier Approval of Fee Increases

Comments: Landrum and Brown recommends private operators should be allowed rate increases to cover at least their cost of capital. The definition of capital improvements should be clearly stated so that both airlines and the private operator can assess the impact on rates and charges.

ATA and NATA oppose provisions that allow airport fee increases based solely on new capital investment without approval of 65 percent of the airport's air carriers. Both suggest that all capital improvement resulting in fee increases should be subject to air carrier approval. ATA argues that the provisions allow the proposed private operator to make unnecessary investments for the sole purpose of increasing their rate of return, exempt from the revenue retention requirements. NATA believes that this automatic approval of capital improvements will raise rates and charges, adversely affect its membership, which represent many of the aviation businesses servicing aeronautical users.

ACI–NA, AAAE and the State of New York support the measure that excludes capital improvements from the 65 percent air carrier rule. Supporters believe without this provision, few capital improvements would be made. ACI–NA and AAAE in their joint statement, indicated, ''It would be simply too easy for carriers taking a short-term view of expenses and profits to veto an airport's more long term assessment of growing needs for capital investment.''

Discussion: FAA reaffirms its position that the 65 percent air carrier rule should not apply to new capital improvement. As we have stated before, Congress, in establishing the program, expressed an intent to determine if private investment could be employed as an alternative funding source. Applying the 65 percent air carrier rule to new capital investment would give carriers undue power over an airport's capital improvement program and possibly reduce an airport operator's ability to meet the long term needs of the market.

Carriers are afforded sufficient protection by provisions of section 47134(b)(1)(A)(i) and (ii). This provision of the statute effectively requires the consent and participation of the carriers for the airport sponsor to transfer the airport to a private operator. The FAA expects that during this time carrier concerns and issues will be addressed. Additionally, tenants and carriers have the protection of their leases, an airport's grant assurances and the federal requirements for airport rates and charges.

Final Disposition: The FAA retains the provisions of the draft notice. The text is being modified to explicitly state the exclusion of fee increases attributable solely to capital improvements.

Terms and Conditions To Assure Continued Operation in the Event of Bankruptcy or Insolvency

Comments: AGI believes that existing Federal bankruptcy laws are adequate to handle leased facilities. Title 11 U.S.C. 365(d)(3) (1995) was originally enacted to protect a lessor of commercial realty in the event that the tenant seeks bankruptcy protection and performance of the contract is essential. This section requires the trustee to meet the tenant's obligations under the contract. AGI argues that these provisions could apply to operators of leased airports.

The State of New York suggests that the FAA should require the parties to enter into an agreement that addresses bankruptcy within the framework of existing law.

Landrum and Brown and Infrastructure Management Group suggest a reversion to the public sponsor in the event of bankruptcy along with reasonable cure provisions in the agreement. The operators or creditors of a facility should be given time to rectify the problem before the original public owner steps in. The only lingering issue in such instances is whether and how the parties must compensate each other.

ATA offers a number of options for addressing bankruptcy. These include: (1) The transfer agreement should include an automatic reverter to the public sponsor in the event that the airport ceases operations due to bankruptcy or reorganization (the transfer agreement would not be recognized as an executory contract subject to assumption, rejection or assignment under Section 365 of the Bankruptcy Code); (2) FAA required contingency plan for sponsor takeover in defined circumstances; (3) Record as an encumbrance on the airport property the obligation to operate the property as an airport; (4) establish an escrow fund or bond fund to ensure funds are available to pay essential costs of operating the airport; (5) Use Chapter 9 insolvent municipality provisions instead of Chapter 11 or 7 for airport bankruptcies.

ATA also suggests that the FAA pursue rigorous auditing of private operators and impose the requirement for financial fitness similar to those imposed by the Department of Transportation on air carriers.

Discussion: Given the breadth of suggestions and divergence of views there is no consensus on a specific requirement. As a part of the exemption application submittal, the airport sponsor and private operator should provide a plan that specifically addresses the requirements of section 47134(c)(2). Because it would involve the application of bankruptcy law, the plan should include legal justification and a legal opinion. The proposed approach will assure continued operation of the airport in the circumstances specified in section 47134(c)(2). FAA reserves the right to modify, or totally reject the plan and require the airport operator to submit a new plan.

Final Disposition: The FAA will revise the application procedures to require the public sponsor and private operator to specifically address the requirements of section 47134(c)(2).

Terms and Conditions To Assure Capital Investment and Improvements by the Airport Operator

Comments: San Francisco questioned whether FAA has the legal authority to require that the private operator ''exceed or accelerate'' the public sponsor's capital improvement plan (CIP). While San Francisco recognizes that offering such a five year CIP is one method of ensuring sufficient private investment, it suggests that this not be a requirement for obtaining FAA approval. FAA should make it clear that the private operator's CIP does not have to exceed or accelerate the public sponsor's CIP. Such a requirement may decrease the attractiveness of private investment, when the public sponsor has made high investments in the airport prior to privatization. San Francisco believes that the air carriers will effectively ensure that the private sector will invest sufficient amounts in capital projects. FAA should exercise its role concerning capital investment on a case by case basis without a predetermined level of investment.

ACI–NA and AAAE support the procedural provisions that require the transfer agreement to include a provision to assure the airport operator will maintain, improve and modernize the airport facilities as specified in the CIP and subsequent updates.

Landrum and Brown suggests that the private operator should be required to submit a master plan for FAA approval along with the five year CIP.

ATA raises concerns that the requirement to implement a five year program could lead to inefficient expenditures of funds for capital projects. They recommended the FAA require purchaser/lessor to provide annual documentation showing sources of funds for the projects to be implemented in next 12 months including, if applicable, information on borrowed money and proposed means of repayment of borrowed funds.

BAA USA is concerned that the requirement of a ''reasonable rate of return'' may prove to be a source of controversy and generate wasteful capital expenditure. Airport operators could be induced to spend more on capital projects, just to extend the scope of the ''reasonable rate of return''.

AGI believes that the public sponsor has the greatest incentive to ensure the private operator's CIP is sufficient for the needs of the airport.

Discussion: In enacting the airport privatization pilot program, it was the intent of Congress to determine if new investment and capital from the private sector can be attracted through innovative financial arrangements. The FAA and the public have a reasonable expectation that a private operator will provide new capital and create new investment opportunities at the airport. A comparison of the public sponsor's five-year CIP with the private operator's CIP will be useful in evaluating the private operator's commitment. The example of exceeding or accelerating the public sponsor's most recent five year CIP is only one of several examples of means that a private operator can use to assure a sufficient minimum investment of the private operator's funds. The FAA will not, however, require the private operator's commitment to do so.

The final procedures do not identify a predetermined level of investment. Rather, the private operator is required to provide an assurance that the operator will provide sufficient resources of its own funds in conjunction with other financial resources for carrying out the maintenance, improvements and modernization of the facility as required by the statute. This should be accomplished on an annual basis with documentation provided showing the source of all funds.

One commenter suggested that the private operator should be required to submit a master plan for FAA approval along with the five year CIP. While there is not requirement for a master plan development, we would expect all capital development to be performed in accordance with the airport sponsor's grant assurances.

Final Disposition: The application procedures are modified as discussed.

Terms and Conditions Relating to Safety and Security

Comments: Both the Air Line Pilots Association and the Transportation Trades of AFL–CIO recommend that private operators should conduct public hearings on safety and operational considerations at the specific airport with an opportunity for input by representatives of aviation employees. It was also suggested that private operators conduct monthly or bi-monthly safety meetings.

Discussion: Such mechanisms as tenant advisory committees and airport safety and security meetings are basic management tools for ensuring a safe and secure airport. We expect all airports, depending on their level of activity, degree of complexity and regardless of whether they are privately or publicly operated to have some program for addressing the safety and security needs of the airport.

As we have indicated, we will require private operators to obtain a Part 139 airport operating certificate and comply with Part 107 airport security requirements at facilities where appropriate. Existing certificates held by the public operator are not transferable. Private operators will be required to demonstrate their fitness for approval in the same manner that public operators are presently required to comply. For general aviation airports, we will expect the private operator to provide the same level of safety and security as required of the public sponsor under the existing grant obligations.

Final Disposition: The FAA believes that existing airport procedures and practices are adequate to ensure tenant and employee input on safe airport operating practices and conditions. The application procedures are modified to encourage the private operator to maintain the public sponsor's existing mechanisms for communicating with airport users and the public on safety and security issues. No other modifications have been made.

Terms and Conditions Relating to Noise Mitigation

Comments: The National Organization to Insure a Sound Controlled Environment (NOISE), in their comments, asked several questions regarding the application procedures. First, NOISE wants to know if the terms and conditions of existing grants applicable to noise mitigation will be a part of the obligations of the private operator; Second, will the new airport owner be obligated to comply with the determination of the existing Part 150 Noise Compatibility Plan. Third, will notice of the proposed sale of the airport be served on local jurisdictions that surround the airport or that are located a specified distance from the airport within a certain number of miles, or within a specified DNL noise contour. NOISE's concern is that **Federal Register** notification may be insufficient to reach many small communities. Finally, NOISE would like to see a public hearing in the airport community before an exemption is granted.

AGI indicates that the statute limits AIP grant funding to 40% Federal share at section 47134 airports. The procedures are unclear as to whether the reduced Federal share applies to both new applications and projects approved but not funded.

Discussion: Standard grant assurance No. 5 requires a transferee approved by the Secretary to assume all of the terms, conditions and assurances contained in the sponsor's grant agreement. These requirements are inserted in the contract or document transferring the sponsor's

interest, and become binding upon the transferee.

In reviewing a request for transfer, the FAA will consider whether a proposed private operator under a privatization pilot project will assume the obligations of the original sponsor under existing grant agreements or deeds, and whether the new owner has the powers and authority to fulfill its obligations under the assurances. The FAA would expect a private operator to assume any existing Part 150 noise mitigation program for the airport to the extent applicable to a private firm. However, we note that under Part 150, implementation of approved noise mitigation measures is voluntary.

With respect to the request for a public hearing, as we previously indicated, we encourage airport sponsors to actively solicit public comment. However, we do not intend to dictate to airport sponsors a single method for conducting public outreach. We believe public outreach should be conducted at the local level and in accordance with applicable state and local laws.

On the subject of the applicability of reduced Federal share for AIP funded projects, it makes no difference whether the application is pending or in preparation. If a grant of discretionary funds is approved by the FAA prior to the airport sponsor being granted an exemption under section 47134, the conventional Federal share would be used, even if the project is not completed at the time of the transfer. Any grant of discretionary funds executed after the transfer would be at the Federal share of 40% for allowable project costs.

Final Disposition: No modification is required to address the concerns of the commenter.

Unfair Competition Finding

Comments: AGI wanted to know what constitutes ''unfair and deceptive practices''. The concept is not defined. The commenter suggests the standard for ensuring reasonable access without unjust discrimination replace the ''unfair and deceptive practice'' standard.

Discussion: The statute permits the FAA only to approve an application, if the approval will not result in unfair and deceptive practices or unfair methods of competition. While there may be some overlap between this standard and the standard of reasonable access without unjust discrimination, the FAA is not prepared to treat the standards as identical. Doing so would make one of the standards meaningless. This outcome should be avoided in construing statutory language. We will not further define ''unfair and deceptive practices'' or ''unfair methods of competition'' in the procedures. Ample guidance on this subject can be found in agency and court decisions interpreting section 411 of the Federal Aviation Act of 1958, as amended, 49 USC 41712 and § 5 of the Federal Trade Commission Act, 15 USC 16. However, to assist in making this determination, the final procedures are being modified to require information on any findings that the private operator or key personnel have engaged in unfair or deceptive practices or unfair methods of competition, or are the subject of pending investigations.

Protection of General Aviation Interests

Comments: AOPA recommended that each private operator should specifically address in the application how proposed changes at the airport will impact general aviation.

Discussion: Congress intended that general aviation users not be adversely impacted as a result of the transfer of the airport from public to private operation. This is demonstrated by the provisions in the statute governing fee increases, section 47134(c)(5) and the protection of general aviation interests, section 47134(f). In order for the FAA to fulfill its responsibility under the statute, we would expect to see what actions the airport sponsor and private operator plan to take to comply with the requirements of these provisions. At a minimum, we would expect to see how the proposed changes in the management and operation of the airport would affect general aviation users. Additionally, we would expect to see some effort by the airport sponsor and private operator to undertake reasonable consultations with affected parties using the airport. The requirements of this section could also be addressed by providing a description of the operator's plans for the development of general aviation.

Final Disposition: The application procedures will be revised to request that the applicant private operator provide information on its plans for consulting and communicating with the general aviation users regarding the planned privatization of the airport, and on the applicants' projections of the impact of the proposal on general aviation.

Revocation Procedures

Comments: Several commenters argue that the FAA should not require automatic reversion of the airport to the public sponsor. Automatic reversion should be one of many options available. The FAA should retain discretion to take appropriate action. ACI–NA and AAAE request that revocation procedures should be crafted in such a way that they are not an impediment to the bond issuing ability of the airport sponsor. The Transportation Trades Department of the AFL–CIO suggests that the FAA consider revocation procedures for termination of the program when privatization has been found to be contrary to the public interest.

Discussion: The FAA did not propose to require reversion to the public sponsor in the event of default or violation of the exemption conditions, as a condition of granting an exemption, and the final procedures do not add a requirement for reversion. However, the application must provide for continued operation of the airport and compliance with other obligations in the future under all foreseeable circumstances. The provisions will vary according to the circumstances of the airport privatization proposed. For example, where a public sponsor does not operate any other airports and will no longer maintain a capability to assume operation of an airport on short notice, the applicants may provide means other than reversion to the former public sponsor as a first recourse for correction of problems in the private operation of the airport.

The FAA is aware of effect that the potential enforcement action, even if the probability is very small, can have on the predictability of a future revenue stream for purposes of determining investment risk. As the ACI–NA and AAAE comments noted, the FAA has developed enforcement procedures for passenger facility charge (PFC) collection requirements that permit underwriting of bond issues based on PFC collections alone. While the FAA does not intend to prescribe separate procedures for agency enforcement of grant assurances and exemption conditions involved in a privatization project, we can give assurance that in the unlikely event any enforcement action was necessary in such a case, the agency will be sensitive to the financial commitments and covenants associated with the financing of the project. Moreover, by requiring a three-way agreement or the inclusion of third-party beneficiary rights for the FAA as part of the original transaction, the FAA has provided means for limited, targeted correction of deficiencies without relying on the revocation for the underlying exemption.

Termination of the pilot program, as opposed to action to correct deficiencies

in a specific privatization project, is not within the FAA's authority.

Final Disposition: As discussed previously, the FAA will require the parties to provide third party beneficiary rights to the FAA or to execute tripartite agreements. These remedial options in addition to revocation will assure that the FAA's compliance program is effective.

Administration of AIP Grants

Comments: The State of New York, Landrum and Brown, and AGI argue that the system of prioritization of discretionary AIP funds should continue to make no distinction between public or private airports. Projects should be selected solely on their merits.

Final Disposition: Discretionary AIP funds will be awarded in accordance with existing policy on priority of projects. Private ownership *per se* will not affect grant priority or eligibility, but the FAA will continue to consider the availability of other sponsor resources and the sponsor's use of available funds in granting applications for discretionary grants.

Process for Applying for an Exemption Under § 47134

Exemption Application and Review Process: Overview

The FAA will apply the following policies and procedures for filing and review of requests for privatization of a public airport under 49 U.S.C. 47134:

1. A request for participation in the airport privatization pilot program will be initiated by the filing of a preliminary application for exemption under section 47134(a). A public sponsor may also elect to file a final application without the prior filing of a preliminary application, if the public sponsor has selected a private operator.

2. With the exemption noted below, preliminary and final applications for exemption will be accepted on or after December 1, 1997, and will be handled on a first-come first-served basis until the limits of section 47134 are reached. An otherwise qualifying preliminary application for exemption will be accepted before December 1, 1997, if the sponsor has issued, on or before the date of publication of this notice, a formal solicitation or request for proposals for the sale or lease of an airport, but has not selected an operator. If the sponsor has selected the operator on or before the date of publication of this notice, the FAA will accept only a final application before December 1, 1997. All applications will be evaluated in the order of receipt.

3. Participation in the program is limited to five airports. The maximum of five participants in the program will be considered to have been reached based on applications under review, not exemptions granted, so that an airport with an application on file will not be in a race for inclusion in the program. A standby list will be established for airports not selected.

4. An application received by the FAA will be considered to be filed on the date received. Application packages will be date-stamped on receipt in Room 600 East, FAA headquarters building. The FAA will not determine order of filing based on the time of day received. If multiple applications are received on the same day, their order of filing will be determined by public lottery rather than by time of day received.

5. FAA will review the application to determine if it meets the procedural requirements stated in this notice.

6. The FAA will accept preliminary applications filed before the applicant has commenced the procurement process for the selection of an operator. The preliminary application must contain the information listed under the section titled ''Contents of Applications''. The FAA will notify applicants of its decision on the acceptance of the application for review within thirty days of the filing of the preliminary application.

7. If the preliminary application meets the procedural requirements described in this notice, the applicant will be notified that the application is ''accepted for review.'' The FAA may request additional information before accepting the application for review, but the original filing date will remain in effect. The applicant is authorized to select a private operator, negotiate an agreement and submit a final application to the FAA.

8. If the preliminary application does not meet the procedural requirements described in this notice, and cannot be brought into compliance with those requirements with information requested by the FAA during its 30-day review, the preliminary application will be rejected. The FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new application at any time, and receive a new ''on file'' date at that time.

9. The FAA will publish in the **Federal Register** a notice that a preliminary application has been received under 49 U.S.C. 47134, and that the FAA has accepted the application for review.

10. Applicants may file a final application after the public sponsor has selected a private operator and reached substantial agreement on the terms of the privatization transaction. If an application cannot reasonably be brought into compliance with the requirements of section 47134 and other applicable Federal statutes with current information in accordance with the time schedule submitted during the preliminary application, the FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new application at any time, and receive a new ''on file'' date at that time.

11. The FAA will publish in the **Federal Register**, a notice of receipt of the final application, establish a docket, and accept public comment on the application for a period of 60 days. Selection as one of the 5 airports eligible to participate in the program will be evidenced by the issuance of an exemption under section 47134(b). If an application is approved, an exemption will be issued after the execution of all documents necessary to fulfill the requirements of section 47134 and other laws and regulations within the FAA's jurisdiction (e.g., issuance of a Part 139 certificate to the private operator; FAA approval of a security program under Part 107). FAA representatives will be available to meet with parties interested in an airport privatization project both before and after the filing of a preliminary application for exemption to discuss the Federal statutory requirements and policies that apply to applications under section 47134.

Filing an Application

1. Applicants must submit one original application package and four copies containing the information described under ''Content of Applications'' in this notice to: Susan L. Kurland, Associate Administrator for Airports, ARP–1, Room 600 East, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

2. All preliminary and final applications may be delivered or mailed, but will not be considered to be ''on file'' with the FAA until received and date stamped in the Office of the Associate Administrator for Airports, Room 600 East.

3. There is no required form for an application. However, the application package must be submitted with a cover letter, signed, in the case of the preliminary application, by appropriate officials of the current public sponsor or in the case of the final application, jointly by appropriate officials of the current public sponsor and the private operator proposing to buy or lease the

airport, requesting an exemption pursuant to 49 U.S.C. 47134 for the purpose of the privatization of an airport. Please title each section according to the appropriate sections of the application. Officials signing for the public sponsor must provide evidence of their authority to file the application.

Contents of the Preliminary Application

The preliminary application should consist of:

1. As much of the information required by Part I, ''Parties to the Transaction,'' for the Final Application, as is available.
2. Summary narrative of the objectives of the privatization initiative; what the public sponsor wants to accomplish by the solicitation.
3. A description of the process and a reasonable, realistic timetable to be employed in selecting an operator and completing transfer of the airport. This should include the identification of all local approvals and the time frame when the FAA can anticipate the final application will be submitted for review.
4. All of the information required by Part II. ''Airport Property,'' from the Final Application
5. Financial statements including balance, income and cash flow statements for the last two reporting periods.
6. A distribution ready copy of the request for proposals for the management and operation if the airport under section 47134. The document should contain references to this notice and the nine statutory objectives listed in section 47134(c).

The Final Application

The following statements and information must be included in the final application. The FAA realizes that some documents, figures, and other information will not be available until shortly before the execution of the transfer transaction. The final application must be filed after the public sponsor has selected a private operator and reached sufficient agreement with the operator on the terms of the transaction to represent these terms in an application. The FAA will not require that all information listed below be provided at the time of the application, however. For each item below for which information is not available, the applicant may substitute a description of the expected response and the date by which the final information will be available. Information not provided with the application should be submitted to the FAA as soon as it becomes available.

Part I. Parties to the Transaction

A. Name of the airport proposed for sale or lease.

B. Name and address of the public sponsor of the airport; name, address, telephone number and fax number of the person to contact about the application.

C. Name and address of the private operator proposing to purchase or lease the airport; name, address, telephone number and fax number of the person to contact about the application.

D. If the private operator proposing to purchase or lease the airport is a partnership, jointly venture, or other consortium of multiple interests, the name and address of each of the participating members.

E. Citizenship of the private operator and/or each member of the private operator consortium, and percentage of interest of each such member.

F. A statement of the public sponsor's authority to sell or lease the airport, with a citation to legal authorities.

Part II. Airport Property

A. A description if the airport property to be transferred. Applications should describe property in sufficient detail to identify the parcels of property and facilities to be transferred; a map and a legal description of the property may be included but are not required.

B. A history of the acquisition of existing airport property: applicants should include information on grants, types of deeds, the dates and means of conveyance, e.g. Surplus Property Act other Federal conveyance of donated property, parcels purchased with Federal funds and parcels purchased with only local funds.

Part III. Terms of the Transfer

A. A detailed description of the terms of the transfer, other than financial, including:

The form of the transaction (sale, lease, other);

Term of the lease or other transfer agreement;

Description of any rights, authority, or interests retained by the public sponsor, including reversion of title to facilities;

If the private operator is a consortium, a description of the respective rights and responsibilities of each member;

B. Financial terms of the transaction:

Amounts and timing of payments to public sponsor.

Amounts of payments to sponsor to be used, respectively, for airport purposes (including recoupment of public sponsor investments not previously recovered) and other purposes.

Financial arrangements, including source of the funds used by the private operator for purchase payment or initial and future lease payments.

Projected impact of the initial transaction on the fee structure for charges to airport users.

Projected impact of future purchase or lease payments to the public sponsor on the fee structure for charges to airport users.

Other relevant financial terms of the transfer.

C. Copies of all documents executed as part of the transfer, to be provided as they are executed or are in sufficiently final form to indicate the substantive nature of the expected final document.

D. If applicable, a request for confidentiality of any particular document or information submitted, with supporting information.

E. Provisions in document conferring third party beneficiary rights on behalf of the FAA to enforce key obligations, or the alternative tripartite agreement among the FAA, the public sponsor and the private operator giving the FAA the right to enforce directly against the private operator key obligations contained in AIP grant agreements and the assurances required by Section 47134..

Part IV. Qualifications of the Private Operator

A. Complete description of airport management and operations experience. The identity, experience, expertise and responsibility of key personnel. A description of the facilities and airports presently being managed by the company, both domestically and internationally. If the private operator is a newly formed entity, describe the experience of the constituent members and the proposed management structure to integrate operations functions.

B. Financial resources for operating/capital expenses of the airport. Copies of the 10K annual reports filed in the past 3 years with the Securities and Exchange Commission, if not filed, balance sheet and income statement prepared in accordance with Generally Accepted Accounted Principles, with all footnotes applicable to the financial statements.

C. Timing/details of application for Part 139 certificate, if applicable.

D. Plan for compliance with Part 107, if applicable.

E. A description of the private operator's capability of complying with the public sponsor's existing grant assurances, including the assurance of compatible land use around the airport; the protection of navigation aids, approach lights, runway safety areas, and runway protection zones; and the

continuation and extension of aviation easements.

F. Affiliations with air carriers or other persons engaged in aeronautical business activity at an airport (other than airport management).

G. A description of all charges of unfair or deceptive practices or unfair methods of competition brought against the private operator, private operator's key personnel and in the case of a private operator that is a joint venture, partnership or other consortium, the separate members of the entity in the past 10 years. The description should include the disposition or current status of each such proceeding.

Part V. Requests for Exemption

A. Describe the specific exemption requested by the public sponsor under 49 U.S.C. 47134(b)(1), from the prohibition on use of airport revenue for general purposes, including the amount of funds involved. The description should include sale or lease proceeds as well as funds in existing airport accounts that would be transferred to general accounts.

B. Describe the specific exemption requested by the public sponsor under 49 U.S.C. 47134(b)(2), from the requirement to repay Federal grants funds or return property.

C. Describe the specific exemption requested by the private operator under 49 U.S.C. 47134(b)(3), from the prohibition on use of airport revenue for general purposes. The description should include the anticipated amount of airport revenue to be used for compensation of the private operator, the source of airport funds involved, and a description of the effect, if any, on air carrier or other aeronautical user fees.

Part VI. Certification of Air Carrier Approval

A. Provide a certification that air carriers meeting the requirements of 49 U.S.C. 47134(b)(1)(A) approve the exemption described in Part V.A. above.

B. Provide (1) a list of all U.S. air carriers serving the airport, to include all carriers conducting operations at the airport under authority of 14 CFR Part 121 that have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year; all carriers conducting operations at the airport as a commuter air carrier within the meaning of 14 CFR Part 298 that have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year; and all operators conducting operations at the airport under authority of 14 CFR Part 135 that have a lease and/or use agreement at the airport and that have at least one aircraft used in Part 135 operations based at the airport; but excluding any carrier that is not currently serving the airport or that has responded to a solicitation or submitted a proposal to serve as a private operator or participate in a private operator consortium at that airport; (2) a list of the air carriers that have approved the exemption; (3) the total landed weight of all operations by air carriers listed under VI.B.1 above at the airport for the preceding year; (4) the total landed weight of each air carrier listed under VI.B.1 above that has approved the exemption; and (5) a list of carriers serving the airport in the previous or current year but excluded from the list in VI.B.1, with the reason for exclusion.

C. Provide a copy of each document indicating air carrier approval of or objection to the exemption requested.

D. Provide a description of consultation with foreign air carriers serving the airport on proposals for air carrier approval under 49 U.S.C. 47134(b)(1)(A).

Part VII. Airport Operation and Development

A. Provide a description of how the private operator, the public sponsor, or both will address the following issues with respect to the operation, maintenance, and development of the airport after the proposed transfer.

1. Part 139 certification. A request for Part 139 certificate should be filed with the local FAA regional Airports Division. The exemption application needs only to reflect the private operator's intentions and the status of a certificate application, if applicable.

2. Continuing access to the airport on fair and reasonable terms and without unjust discrimination, in accordance with section 47134(c)(1).

3. Continued operation of the airport in the event of bankruptcy or other financial or legal impairment of the private operator, in accordance with the specific terms of section 47134(c)(2). The application should include any provision for reversion to the public sponsor. The application should include a legal opinion and certification that the proposed plan will be effective under operation of all applicable law, including but not limited to bankruptcy law, in assuring the continued operation of the airport.

4. Maintenance, improvement, and modernization of the airport, in accordance with section 47134(c)(3), including the public sponsor's most recent 5-year capital improvement plan (CIP) and the 5-year CIP proposed by the private operator. Applicants should identify the sources of funds to be used for capital development, including any continuing contributions by the public sponsor. If funds are to be borrowed, applicants should identify the expected sources, anticipated repayment terms of any borrowed funds, and the source of revenue to be used for repayment. Applicants should also include any financial security provisions, such as a letter of credit or performance bond, for the accomplishment of the maintenance, improvement, and modernization projects committed to by the private operator.

5. Compliance with the limitations on air carrier fees, pursuant to section 47134(c)(4), not imposed for funding of new capital development undertaken after the transfer to the private operator.

6. Compliance with the limitation on general aviation fees described in section 47134(c)(5).

7. Maintenance of safety and security at the airport, in accordance with section 47134(c)(6). The application should note the applicant's contacts with the Airports District Office on Part 139 and the Office of Aviation Security on Part 107, but does not need to duplicate information filed in connection with those actions. The application should include planned efforts by the private operator to maintain the public sponsor's existing mechanisms for communicating with airport tenants and users and the public on safety and security issues.

8. Mitigation of adverse effects of noise from airport operations, in accordance with section 47134(c)(7). The applicant should specifically describe its intentions with respect to an existing or future Part 150 noise compatibility program for the airport, with respect to the public sponsor's commitments under past records of decisions on airport development projects, and other measures the private operator intends to take in the future.

9. Mitigation of adverse effects on the environment from airport operations, in accordance with section 47134(c)(8).

10. Recognition that section 47134(c)(9) provides that any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.

11. The private operator's intentions regarding consultation with general aviation users regarding the planned privatization of the airport, and the projected effect on general aviation of the proposed changes in operation and management of the airport.

12. Private operator's plans (if known) for development of general aviation.

B. The private operator's acceptance of the grant assurances contained in the public sponsor's grant agreements with the FAA. Assurance 25 need not be addressed. In addition, either (1) the applicants' agreement that the grant assurances and the assurances required for granting an exemption under section 47134 create third-party beneficiary rights enforceable by the FAA in an administrative or judicial legal proceeding, or (2) a proposed tripartite agreement among the FAA, the private operator and the public sponsor granting to the FAA the right to enforce directly against the private operator the grant assurances and the assurances required for granting an exemption under section 47134.

C. Provide a description of the parties' efforts to consult with airport users about the proposed transaction and of the parties' community outreach efforts.

Part VIII. Periodic Audits

Section 47134(k) provides that the FAA may conduct periodic audits of the financial records and operations of an airport receiving an exemption under the pilot program. Applicants should indicate their express assent to this provision in the application.

Issued in Washington, DC, on September 9, 1997.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 97–24430 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on September 17, 1997, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the eighteenth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 17, 1997. The meeting was announced on August 8, 1997 (62 FR 42852). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Summary of Research Activity on 5th-Percentile, 3-Year-Old, and 6-Year-Old Dummies,

Status of Research on Restraint Systems for Rollover Protection,

Improved Frontal Crash Protection—Update on National Automotive Sampling System (NASS) Analysis,

Vehicle Aggressivity and Fleet Compatibility, and

Special Crash Investigations Studies of Air Bag Cases.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by August 21, 1997, in response to the announcement published August 8, 1997.

As announced on August 8, 1997, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by September 3, 1997, to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 11, 1997.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 97–24648 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–058; Notice 1]

General Motors; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its 1997 model Chevrolet Corvettes fail to meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 124, ''Accelerator Control Systems,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 124, Paragraph S5.2 requires the throttle to return to idle position within the time limits specified in S5.3, whenever any component of the accelerator control system is disconnected or severed at a single point. S5.3 requires return to idle within 3 seconds for any vehicle exposed to temperatures of 0 degrees to −40 degrees F (−18 degrees to −40 degrees C).

During the 1997 model year, GM produced 9,500 Chevrolet Corvettes which may not comply with FMVSS No. 124. The vehicles' accelerator pedal module assembly may not return to idle condition within the required time.

GM supports its application for inconsequential noncompliance with the following:

The Chevrolet Corvette employs an electronic throttle control which adjusts the throttle position based on input from the accelerator pedal position. The accelerator pedal is equipped with three springs, any two of which are capable of returning the pedal to rest position. Once this occurs, the throttle returns to idle position approximately 0.2 seconds later. A test run in early May, however, raised a question about the ability of the pedal assembly to return at low temperatures.

GM believes that the failure of the pedal assembly to meet the throttle closing time requirements of FMVSS No. 124 at extremely low temperatures

is inconsequential to motor vehicle safety for the following reasons.

1. *Vehicle Controllability*—In the unlikely event that all of the prerequisites necessary for the noncompliance occurred—that is, a return spring was disconnected or severed on a pedal assembly with residual oil, and the vehicle soaked at ambient temperatures below 32 degrees C—the vehicle would continue to be controllable both by the service brakes and as a result of the Brake Torque Management System.

2. *Reliability of the Accelerator Springs*—The condition which is the subject of GM's noncompliance decision can only occur if one of the return springs is severed or disconnected. The springs in the Corvette pedal assembly, however, have extremely high reliability and are not likely to fail in the real world.

3. *Condition Requires Extreme Temperatures; Pedal Assembly Warms Quickly*—As mentioned above, the root cause of the noncompliance condition is the residual oil on the pedal assemblies congealing below −32 degrees C. Testing at temperatures above that level resulted in full compliance with the FMVSS No. 124 time limits for all pedal assemblies tested. Therefore, the ambient temperatures required for the possibility of this noncompliance to exist are severe. Even if a vehicle with a disconnected return spring soaked under the necessary harsh conditions for a sufficient time to congeal the residual oil, the potential for the noncompliance to occur would exist for only a short time, because the pedal assembly would warm up quickly with activation of the vehicle heating system.

4. *Condition is Self-correcting*—Durability testing indicates that the condition improves with wear. Bench testing was conducted on five production pedal assemblies with poor return times. The pedals on these assemblies were cycled at room temperature. Since the vast majority of driving is done with a only limited pedal movement, each cycle consisted of a 10% application of pedal travel. Every 2,000 cycles the pedal return at (−40 degrees C) was checked. The results, shown in Figure 5 [of the application], indicate that most pedals will return within the specified time limit after 10,000 cycles, and all pedals will easily meet the time limits after 15,000 cycles.

5. *Warranty Data*—GM has reviewed recent warranty data for the 1997 Corvette, as well as complaint data. We are unaware of any data suggesting the subject condition is a real world safety issue.

Interested persons are invited to submit written data, views, and arguments on the application of GM described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 16, 1997.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 9, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–24568 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–60; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1991 through 1996 Lexus SC300 and SC400 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 through 1996 Lexus SC300 and SC400 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991 through 1996 Lexus SC300 and SC400 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 16, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1991 through 1996 Lexus SC300 and SC400 passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the 1991 through 1996 Lexus SC300 and SC400 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991–1996 Lexus SC300 and SC400 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1991–1996 Lexus SC300 and SC400 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991–1996 Lexus SC300 and SC400 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 109 *New Pneumatic Tires,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1991–1996 Lexus SC300 and SC400 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 203 *Impact Protection for the Driver From the Steering Control System:* installation of a driver's side air bag and knee bolster identical to those installed on the vehicles' U.S.-certified counterparts.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. Installation of a driver's side air bag and knee bolster on 1991–1993 models, and installation of both a driver's and a passenger's side air bag and knee bolster on 1994–1996 models. The petitioner states that all air bags and knee bolsters installed will be identical to those found on the vehicles' U.S.-certified counterparts. The petitioner further states that the vehicles are equipped with Type 2 seat belts in both front and rear outboard designated seating positions.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number (VIN) plate will be installed in the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 9, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–24427 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–039; Notice 2]

Decision that Nonconforming 1990–1996 Toyota Landcruiser Multi-Purpose Passenger Vehicles are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1990–1996 Toyota Landcruisers multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990–1996 Toyota Landcruiser MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1990–1996 Toyota Landcruiser), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of September 16, 1997.

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an

opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1990–1996 Toyota Landcruisers are eligible for importation into the United States. NHTSA published notice of the petition on July 15, 1997 (62 FR 37950) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–218 is the eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1990–1996 Toyota Landcruisers not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1990–1996 Toyota Landcruisers originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 9, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–24428 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–61; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1979 Jeep CJ–7 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1979 Jeep CJ–7 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1979 Jeep CJ–7 MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 16, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1979 Jeep CJ–7 MPVs are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1979 Jeep CJ–7 that was manufactured for sale in the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1979 Jeep CJ–7 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1979 Jeep CJ–7, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1979 Jeep CJ–7 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence. . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Motor Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens

marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamps which incorporate rear sidemarker lights.

Standard No. 120 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

The petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 10, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–24429 Filed 9–15–97; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Renoir's Portraits: Impressions of an Age'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Art Institute of Chicago, Chicago Illinois from on or about October 16, 1997 to on or about January 4, 1998, and at the Kimbell Art Museum in Fort Worth, Texas from on or about February 8, 1998 to on or about April 26, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: September 11, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–24679 Filed 9–12–97; 12:24 pm]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline H. Caldwell, Esq., Assistant General Counsel, at 202/619–6975, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 17, in Room 600, 301 4th Street, SW., Washington, DC, from 8:30 a.m. to 11 a.m.

At 8:30 a.m. the Commission will meet with U.S. Information Agency officials: Mr. Joe Bruns, Assistant to the Director and Chief Information Officer and USIA Representative on the Public Diplomacy Task Force; Mr. Richard Stephens, Reorganization Coordinator (Implementation of Reorganization); and Mr. Steve Chaplin, Reorganization Coordinator (Implementation of Reinvention), to discuss foreign affairs agency reorganization.

At 9:30 a.m. the Commission will meet with Mr. Patrick Kennedy, Assistant Secretary of State for Administration and Reorganization Core Team, to discuss foreign affairs agency reorganization.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 10, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–24514 Filed 9–15–97; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Tuesday
September 16, 1997

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 208

Management of Federal Agency Disbursements; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AA56

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearings.

SUMMARY: Section 31001(x) of the Debt Collection Improvement Act of 1996 (the ''Act'') amends 31 U.S.C. 3332 to require Federal agencies (''agencies'') to convert all Federal payments (other than payments under the Internal Revenue Code) from checks to electronic funds transfer (''EFT'') in two phases. Phase one began July 26, 1996. All recipients who become eligible to receive Federal payments on or after that date are required to receive such payments by EFT unless the recipient certifies in writing that the recipient does not have either an account with a financial institution or an authorized payment agent. The Department of the Treasury (''Treasury'') issued an interim rule on July 26, 1996, to implement these requirements.

Phase two begins January 2, 1999. The Act provides that, subject to the authority of the Secretary of the Treasury (the ''Secretary'') to grant waivers, all Federal payments (other than payments under the Internal Revenue Code) made after January 1, 1999 must be made by EFT. This proposed rule, to implement the requirements that take effect after January 1, 1999, is being published for comment.

DATES: Written comments on the proposed rule must be received no later than December 16, 1997. Public hearings on the proposed rule will be held in Dallas on October 14, 1997, in New York City on October 27, 1997, and in Baltimore on October 30, 1997. Requests to speak at one of the three public hearings must be received 14 days before the date of that hearing. See the Supplementary Information for further details concerning the hearings.

ADDRESSES: Comments should be sent to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street S.W., Washington, D.C. 20227. A copy of the proposed rule is available on the Financial Management Service's EFT web site at http://www.fms.treas.gov/eft/. Public hearings will be held in Dallas on October 14, 1997, in New York City on October 27, 1997, and in Baltimore on October 30, 1997. Requests to present oral comments at one of the public hearings should be directed to Martha Thomas-Mitchell by calling (202) 874–6757, or by sending an Internet e-mail to martha.thomas-mitchell@fms.sprint.com. See the **SUPPLEMENTARY INFORMATION** for further details concerning the hearings. Comments on the proposed rule and transcripts of the hearings will be available for public inspection and downloading at the web site address shown above and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments and transcripts, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Robyn Schulhof, Financial Program Specialist, at (202) 874–6754; Diana Shevlin, Financial Program Specialist, at (202) 874–7032; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; Sally Phillips, Senior Financial Program Specialist, at (202) 874–6749; Margaret Marquette, Attorney-Advisor at (202) 219–3320; or Natalie Diana, Attorney-Advisor at (202) 874–6827.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Section 31001(x) of the Act amends 31 U.S.C. 3332 to require agencies to convert from paper-based payment methods to EFT under regulations issued by the Secretary. The Act, which exempts only payments under the Internal Revenue Code of 1986, provides that the conversion from checks to EFT be made in two phases.

During the first phase, which began July 26, 1996, all Federal payments to recipients who become eligible to receive those payments on or after that date must be made by EFT unless the recipient provides a written certification that the recipient does not have an account with a financial institution [1] or an authorized payment agent. On July 26, 1996, Treasury issued an interim rule to implement these requirements. 61 FR 39254. The interim rule will remain in effect through January 1, 1999.

Phase two begins on January 2, 1999; after that date all Federal payments must be made by EFT unless a waiver is available. Under 31 U.S.C. 3332(f)(2), the Secretary is authorized to waive the EFT requirement in specified circumstances based on standards developed by the Secretary. The Act requires recipients of Federal payments (1) to designate a financial institution or authorized agent to which the Federal payments shall be made and (2) to provide the agency that makes the payments with the information needed to make the payments by EFT. 12 U.S.C. 3332(g). The final rule, which will take effect on January 2, 1999, is intended to provide guidance to agencies and recipients regarding compliance with these requirements.

The Act makes EFT the standard for Federal payments. In implementing the Act, Treasury seeks to bring into the mainstream of the financial system those millions of Americans who receive Federal payments and who currently do not use the financial system to receive funds, make payments, save, borrow or invest. Treasury's goals in the implementation process are simple, and focus on payment recipients. These goals include the following: making certain that recipients have access to their funds at a reasonable cost; providing appropriate consumer protection; ensuring that the system delivers payments and information accurately, conveniently, and in a timely manner; and significantly increasing participation by recipients in the country's financial system.

The Financial Management Service (the ''Service''), a bureau in the Department of the Treasury, is responsible for implementation of the Act. As the Federal Government's financial manager, the Service is responsible for collecting and disbursing public money. In fiscal year 1996, the Service issued more than 850 million payments. Approximately 81 percent of those payments (685 million payments) were made to individuals under various benefit programs such as Social Security; the remaining payments consisted of salary, vendor, loan, grant, and tax refund payments.

In fiscal year 1996, approximately 53 percent of Treasury payments were made by EFT. Making payment by EFT benefits both recipients and the Government. Agency records indicate that recipients are 20 times less likely to have a problem with an electronic payment than with a paper check. Unlike check payments, electronic

[1] As used herein, ''financial institution'' means any institution included in the definition of depository institution in 12 U.S.C. 461(b)(1)(A), excluding subparagraphs (v) and (vii), and any agency or branch of a foreign bank as defined in 12 U.S.C. 3101. See also the related section-by-section discussion of this term defined in the proposed rule at § 208.2(e).

payments are not susceptible to being lost, stolen, or damaged in transit. In those few cases where an electronic payment is misrouted, it can be traced and rerouted to the recipient, usually within 24 hours after a claim of non-receipt is received, compared to an average of 14 days for a check. Further, electronic payments are far less susceptible to forgery or alteration than checks. Each year, the Government handles claims relating to approximately $60 million in forged checks, $1.8 million in counterfeit checks, and $3.3 million in altered checks.

EFT payments are also less costly than checks. A check costs the Government approximately 43 cents, including postage, paper check stock and labor costs. An EFT payment costs approximately two cents. Full implementation of the Act is expected to achieve Government-wide savings of about $100 million per year.

Over the past two decades, Treasury has developed numerous products and services to enable agencies to make EFT payments. These include Direct Deposit, Vendor Express, the Automated Standard Application for Payments (''ASAP'') and electronic benefits transfer (''EBT'').

The Direct Deposit program is used by agencies to make benefit payments, as well as wage, salary, retirement, allotment, and travel advance and reimbursement payments.

The Vendor Express program transfers payments directly into the accounts of vendors and other commercial payees. It also provides identifying information about the payment, referred to as remittance data, in an addendum to the payment.

The ASAP system is an electronic payments system used to deliver time-sensitive Federal funds to organizations that have a continuing relationship with the Federal Government. ASAP is used for grant payments and ''same day'' payments to contractors.

The above products primarily use the Automated Clearing House (''ACH'') network, a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Some of Treasury's payment services use Fedwire, a funds transfer system operated by the Federal Reserve System. Fedwire is used primarily for large dollar, small volume payments that need to be confirmed immediately, such as payments to businesses, State and local governments, and educational institutions.

Treasury, along with other agencies, is continuously researching and developing new electronic payment products. In the near future, Treasury expects to publish for comment a proposal to amend its regulation dealing with the use of the ACH network by agencies. The revision of 31 CFR Part 210 will accommodate the current and future use of the ACH network by agencies.

B. Participation in Rulemaking Process

Treasury believes that the success of the conversion to EFT depends on the involvement of all interested parties in the rulemaking process. In developing the proposed rule, Treasury used a wide variety of approaches to obtain data and solicit input from these parties.

The interim rule specifically invited the public to comment on obstacles to receiving payments electronically, the availability of banking services, suggestions for new and improved electronic payment methods, the role of authorized payment agents, and the needs of recipients without bank accounts. The financial industry was invited to discuss electronic payment processing capabilities and suggestions for new and improved electronic payment methods. Agencies were asked to submit implementation plans that describe the types of payments they make by check, the obstacles they face in converting such payments to EFT, suggestions for removing these obstacles, timetables for converting payments, and whether assistance is needed.

Since the publication of the interim rule, Treasury has held numerous meetings with representatives from consumer interest organizations and the financial industry. Treasury also hosted a consumer briefing session attended by representatives from over 30 consumer organizations and a similar briefing for industry that was attended by representatives from 13 financial trade associations.

In addition, Treasury contracted for two research studies related to the electronic payment mandate. The studies were used primarily to obtain information regarding the characteristics of Federal check recipients and to better understand the needs of those recipients, particularly with respect to Federal benefit payments. The studies are available on the Service's EFT web site at http://www.fms.treas.gov/eft/.

Treasury obtained input from agencies through a number of forums, including 11 regional meetings that were attended by more than 1100 agency representatives. Treasury also established an EFT Interagency Policy Workgroup consisting of representatives from 25 executive branch agencies. Finally, Treasury has reviewed the agency implementation plans submitted in response to the interim rule.

C. Public Hearings

In addition, Treasury will hold three public hearings on the proposed rule. The first hearing will be held in Dallas on October 14, 1997, at the Federal Reserve Bank of Dallas, 2200 North Pearl Street, Dallas, Texas. The second hearing will be held in New York City on October 27, 1997, at the U.S. Alexander Hamilton Customs House, 1 Bowling Green, New York, New York. The third hearing will be held in Baltimore on October 30, 1997, at the Baltimore Branch of the Federal Reserve Bank of Richmond, 502 South Sharp Street, Baltimore, Maryland. The hearings in Baltimore and Dallas will begin at 9:00 a.m. The hearing in New York City will begin at 10:00 a.m.

Requests to present oral comments at one of the public hearings should be directed to Martha Thomas-Mitchell by calling (202) 874–6757 or by sending an Internet e-mail to martha-thomas-mitchell@fms.sprint.com not later than 14 days before the date of the hearing. Requests to present oral comments must be accompanied by an outline of topics to be discussed. In order to facilitate the distribution of the comments to attendees at the hearings, presenters must submit, in writing, the text of the comments to be made, at least three business days prior to the hearing. Presentations will be limited to approximately 10 minutes or less. Treasury reserves the right to impose further time or other restrictions on all presentations.

Please notify Martha Thomas-Mitchell prior to the date of the public hearing if any special arrangements or auxiliary aids or services are needed.

II. Comments on the Interim Rule

Treasury received 33 comment letters on the interim rule.[2] The letters were submitted by four consumer organizations, nine trade and labor organizations and associations, two banks, four non-financial institutions, two State government agencies, and nine Federal agencies and offices. Three organizations submitted two letters. The comment letters generally supported the Act and the interim rule, although commenters expressed a wide range of views regarding how best to achieve the Act's objectives.

The principal issues addressed in the comment letters were the needs of

[2] Comments on the interim rule are available for public inspection and copying at the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C.

recipients who do not have bank accounts; the need for consumer protection in connection with EFT; the definition of authorized payment agent and the regulation of such entities; the costs associated with EFT; waivers; vendor payments; and the importance of educating recipients about the EFT mandate. Specific comments are discussed below in the section-by-section analysis.

III. Section-by-Section Analysis

A. Section 208.1—Scope and Application

With one exception, proposed § 208.1 is the same as the corresponding provision in the interim rule. The interim rule requires agencies to make payments by EFT, ''unless a waiver is granted.'' Treasury proposes to replace this phrase with a reference to § 208.4 indicating that agencies and recipients may rely upon the waivers described in that section.

B. Section 208.2—Definitions

Section 208.2(a)—Agency

The definition of *agency* is identical to the definition in the interim rule. For a discussion of this term, see 61 FR 39254, 39255.

Section 208.2(b)—Authorized Payment Agent

The term *authorized payment agent* was the focus of extensive comment and discussion. Some consumer organizations urged Treasury to prohibit certain entities from acting as authorized payment agents, while other organizations suggested that Treasury impose a variety of substantive restrictions on such entities. Some commenters supported defining this term as including non-financial institutions as well as financial institutions on the ground that this would allow recipients without bank accounts to have greater access to electronic payments, while others urged Treasury to limit the category to Federally-insured financial institutions. Concern was expressed about non-financial institutions that charge what was described as excessively high fees for check cashing and other financial services. Treasury was urged to limit the fees charged by authorized payment agents for recipients to access their funds and to regulate the contractual arrangements between authorized payment agents and recipients.

One commenter recommended that if non-financial institutions were included in the definition of ''authorized payment agent,'' they should be required to provide the same level of consumer protection as financial institutions.

One consumer organization argued that only financial institutions and ''possibly the U.S. Post Office'' should be permitted to act as authorized payment agents because no limitations on the contractual relationship between the non-financial institution and the recipient could protect the recipient adequately. A group representing the elderly expressed concern that if nursing homes, assisted living facilities, or other institutions with a financial interest in the recipient's payment are permitted to act as payment agents, they could impose excessive service fees.

A group representing check cashers urged Treasury to define ''authorized payment agent'' in a manner that would allow check cashers to be designated as authorized payment agents. The group commented that check cashers were in a unique position to deliver payments to Federal recipients because of their locations in areas where there are few bank branches and because of the customer service they provide.

A national money transmitter commented that Treasury should allow money transmitters to be authorized payment agents because of their numerous locations nationwide and because of their experience in serving those without bank accounts.

In formulating the proposed regulation, Treasury has considered the language of the Act, as well as the protection of recipients, the comments received, and consistency with other Treasury regulations.

The Act refers to ''authorized payment agent,'' ''authorized agents,'' and ''agent.'' Section 3332(e)(2) directs an agency to waive the requirement to receive payment by EFT during phase one of the EFT mandate if the recipient certifies in writing that he or she ''does not have an account with a financial institution or an authorized payment agent.''

Section 3332(g) provides that:

> Each recipient of Federal payments required to be made by electronic funds transfer shall—
>
> (1) designate 1 or more financial institutions or other *authorized agents* to which such payments shall be made; and
>
> (2) provide to the Federal agency that makes or authorizes the payments information necessary for the recipient to receive electronic funds transfer payments through each institution or *agent* designated under paragraph (1).
>
> (Emphases added.)

The Act, however, does not define ''authorized payment agent,'' and the legislative history is silent on the meaning of this term. Treasury believes that all three terms—''authorized payment agent,'' ''authorized agents,'' and agent''—refer to the same entity or entities and are to be construed identically. The language quoted above suggests that an authorized payment agent is an entity other than a financial institution. Further, this language could be read as meaning that payment may be made to an authorized payment agent, either directly to an account held by an authorized payment agent, or to an account held by a financial institution in the name of the authorized payment agent.

At the present time, however, Treasury cannot deliver a Federal payment by EFT directly to an entity other than a financial institution because electronic financial transactions are made primarily through the ACH network and membership in the ACH network system is limited to financial institutions. Further, as a general rule, the Federal Reserve Banks provide ACH and wire services only to financial institutions. Therefore, it is not possible from an operational standpoint to deliver Federal payments by EFT directly to any entity that is not a financial institution.

It is possible operationally to deliver a payment by EFT to an account in the name of an authorized payment agent held by a financial institution. However, the deposit of a Federal payment into an account controlled by a third party other than the person entitled to the payment raises concerns about the protection of the recipient's interests. Specifically, Treasury is concerned about the potential failure of agents to honor their obligations, especially since, except in limited cases, there is no Federal oversight of such arrangements. Additionally, non-financial institutions may not be subject to Federal consumer protection laws. Therefore, defining ''authorized payment agent'' broadly and permitting Federal payments to be deposited into accounts controlled by a wide range of entities may expose recipients to the credit risk associated with the failure of such authorized payment agents. However, there is one situation in which experience suggests that it is in the best interest of the recipient to make a Federal payment to someone other than the recipient. This situation involves recipients who are physically or mentally incapable of managing their payments.

Proposed § 208.2(b) defines ''authorized payment agent'' as any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration (''SSA''), the Department of Veterans

Affairs (''VA''), the Railroad Retirement Board (''RRB'')(collectively, the ''benefit agencies'' for purposes of the section-by-section analysis), or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment. The Social Security Act permits the SSA to make a benefit payment to ''another individual, or an organization'' when doing so is in the best interest of the recipient.[3] The Veterans' Benefits Act[4] and the Railroad Retirement Act[5] contain similar provisions. SSA and the RRB use the term ''representative payee'' to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is ''legally incompetent or mentally incapable of managing benefit payments.'' The VA uses the term ''fiduciary'' to refer to individuals or organizations appointed to serve in similar circumstances.

Other agencies, such as the Office of Personnel Management, also make Federal payments to individuals and provide for representative payees and fiduciaries. While not included by name, the phrase ''or other agency'' in the proposed definition is intended to refer to these agencies.

SSA, the VA, and the RRB have issued detailed regulations addressing the qualifications and duties of representative payees and fiduciaries.[6] The rules governing these representational relationships are long-standing and well established. In addition, the definition of the term ''recipient'' in Treasury's regulation governing the use of ACH by agencies refers to representative payees and fiduciaries. See 31 CFR 210.2. In fiscal year 1996, approximately 10 percent of Social Security benefit payments (60 million payments) were made to approximately five million representative payees. Therefore, Treasury believes that it is appropriate to define the term ''authorized payment agent'' by reference to existing practice and the regulations of the agencies making Federal payments.

The effect of the proposed definition in § 208.2(b), together with the requirement in § 208.6, which outlines account requirements for purposes of this rule, is that all Federal payments will be made to an account at a financial institution. Such account must be in the name of the recipient or in the name of an authorized payment agent who stands in the shoes of the recipient for purposes of payment.[7] The involvement of a financial institution at this stage provides recipients and agencies with important protections, namely, deposit insurance in most cases[8] and the safety and soundness associated with a regulated financial institution. Treasury specifically invites public comment on the proposed definition of ''authorized payment agent'' in § 208.2(b) and the provision, § 208.6, in which this term is used.

Section 208.2(c)—Electronic funds transfer

The proposed definition of *electronic funds transfer* in § 208.2(c) is similar to the definition of that term in the Act. It is identical to the definition in the statute and the interim rule except that the proposed definition includes a statement that the term includes a credit card transaction.

Treasury recognizes that the definition of ''electronic funds transfer,'' as proposed, is somewhat broader than the definition of that term in the Electronic Fund Transfer Act, 15 U.S.C. 1693 (''EFTA''). Specifically, the credit card transactions referred to in the proposed rule do not satisfy the definition of an EFT in the EFTA in that the transaction does not debit or credit a consumer asset account. In addition, ACH transactions to or from a commercial account would not be covered by the EFTA.

Section 208.2(d)—Federal Payment

The definition of *Federal payment* is the same in the proposed rule as in the interim rule, except for minor technical changes in the miscellaneous payments section.

Section 208.2(e)—Financial Institution

The definition of *financial institution* has been changed from the definition of that term in the interim rule. The proposed rule defines ''financial institution'' to mean a depository institution as defined in 12 U.S.C. 461(b)(1)(A), excluding subparagraphs (v) and (vii), and an agency or branch of a foreign bank as defined in 12 U.S.C. 3101. Under this definition, banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches would be considered ''financial institutions.'' This change has been made to reflect the class of entities that can participate directly in the ACH, i.e., financial institutions that are authorized by law to accept deposits.

Section 208.2(f)—Individual

Treasury proposes to add a definition of *individual.* Proposed § 208.2(f) defines ''individual'' to mean a natural person.

Section 208.2(g)—Recipient

Treasury proposes to add a definition of *recipient.* Proposed § 208.2(g) is based on the definition of ''recipient'' in 31 CFR 210.2 and provides that ''recipient'' means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

Section 208.2(h)—Secretary

Proposed § 208.2(h) defines *Secretary* to mean Secretary of the Treasury.

Section 208.2(i)—Treasury

Proposed § 208.2(i) defines *Treasury* to mean the United States Department of the Treasury.

The interim rule contains a definition of the terms ''benefit payment'' and ''payment.'' Since the proposed rule defines the term ''Federal payment,'' Treasury proposes to omit the definition of ''benefit payment'' and ''payment'' from the rule.

C. Section 208.3—Payment by Electronic Funds Transfer

Proposed § 208.3 implements 31 U.S.C. 3332(f)(1) and provides that, notwithstanding any other provision of law, all Federal payments made by an agency after January 1, 1999, must be made by EFT, unless one of the waivers set forth in § 208.4 applies. Under the definition of ''Federal payment,'' payments made under the Internal Revenue Code of 1986 (i.e., tax refunds) are excluded from the EFT mandate.

D. Section 208.4—Waivers

The Act authorizes the Secretary to waive the requirement to make Federal payments by EFT for individuals or classes of individuals for whom compliance imposes a hardship; for classifications or types of checks; and in other circumstances as may be necessary. 31 U.S.C. 3332(f)(2)(A). Subparagraph (B) of § 3332(f)(2) directs the Secretary to make waiver determinations based on standards developed by the Secretary.

The interim rule invited public comment on the need for waivers. In the

[3] 42 U.S.C. 1383(a)(2)(A)(ii)(I).

[4] 38 U.S.C. 5502.

[5] 45 U.S.C. 231k.

[6] See 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13.

[7] Section 208.6 also permits a Federal payment to be deposited into an account in the name of a securities broker or dealer. See discussion below.

[8] Treasury is aware that a few financial institutions that are capable of receiving Federal payments through the ACH system may not have deposit insurance. The proposed rule does not place any additional requirements on these institutions, i.e., recipients who currently receive Federal payments by EFT through such institutions will not be required to make any changes to existing arrangements.

public comments and in meetings with agencies, the public, and industry, several themes were expressed repeatedly, regarding the standards that should be developed for waivers.

The first standard is the need for waivers where the conversion from check to EFT imposes a hardship on the recipient. Consumer organizations urged Treasury to make waivers readily available to all recipients who assert that receiving payment by EFT would impose a hardship.

The second standard is ''impossibility.'' Agencies noted that, for a payment to be made by EFT and for the recipient to gain access to the funds, certain conditions must be present. EFT requires a modern communications system and the participation of financial institutions with the requisite operational capabilities. In addition, in foreign countries, EFT requires a reasonably stable political environment. If these conditions are not present, EFT becomes more difficult and, in some cases, impossible.

The third standard is ''cost-benefit.'' Agencies described cases in which they make small dollar payments or one-time payments and urged Treasury to authorize agencies to take into account the costs and benefits of using EFT in such cases.

The fourth standard relates to law enforcement and national security. Agencies engaged in law enforcement and national security described circumstances in which making a payment by EFT would endanger the safety of an agent or a person cooperating with an agency.

Based on these four standards, Treasury proposes to adopt the eight waiver categories set forth in § 208.4. Treasury considered adopting a process under which agencies would apply to Treasury for a waiver. However, Treasury believes that an application process would impose an unnecessary administrative burden on the agencies and Treasury and could delay the processing of Federal payments. For these reasons, the proposed regulation does not require agencies to apply to Treasury for the waivers that are available to an agency. Instead, the proposal contemplates that agency officials will determine whether a payment or class of payments falls within one of the waiver categories described in subsections (c) through (h). As appropriate, Treasury will provide guidance to agencies regarding the various waiver categories.

In the case of the waivers available for individuals, Treasury plans to develop, and make available to agencies, model language that an individual would use to certify to the agency that receiving payment by EFT would impose a hardship due to one of the enumerated barriers. The certification would be based on the individual's own evaluation of his or her circumstances. Treasury believes that this subjective approach is consistent with Congressional interest in minimizing the hardship associated with conversion from check to EFT for some recipients, and recognizes the wide variety of circumstances in which recipients live and work. The proposed rule does not anticipate that agencies will evaluate an individual's circumstances; rather, Treasury expects that a waiver from payment by EFT will be automatic and based solely on the individual's certification.

Proposed § 208.4 (a) and (b) provide waivers from the requirement to receive payment by EFT for certain classes of individuals for whom such requirement would impose a hardship. Specifically, proposed § 208.4(a) sets forth two waivers for those individuals who have an account with a financial institution and who became eligible for a Federal payment before July 26, 1996, and § 208.4(b) sets forth three waivers for individuals who do not have an account with a financial institution, regardless of when they became eligible for payment. There are no waivers for individuals who have an account with a financial institution and who become eligible for a Federal payment on or after July 26, 1996 (''newly-eligible recipients''), although there may be circumstances in which an individual is paid by check because the agency's obligation to pay by EFT is waived pursuant to a waiver described in subsections (c) through (h).

Treasury's proposal to tie the availability of a waiver for an individual who has a bank account to the date an individual became eligible for the Federal payment is based on a review of its experience, and the experience of the agencies responsible for the vast majority of Federal payments, during phase one. As noted above, the Act and Treasury's interim rule provide that newly-eligible recipients must receive payment by EFT unless the recipient certifies in writing that he or she does not have an account with a financial institution. The SSA, which certifies 71% of the payments made by Treasury each month, reports that approximately 76% of the recipients who became eligible to receive Social Security and Supplemental Security Income payments since July 26, 1996, are receiving payment by EFT.[9] Benefit agencies report that very few of these recipients have indicated that receiving payment by EFT would cause a hardship of any kind.

Based on the favorable experience of SSA and the other benefit agencies, and the fact that newly-eligible recipients do not have a history of receiving their Federal benefit payments by check and, therefore, would not experience a change in the manner in which they receive payment, Treasury proposes to take an approach with respect to newly-eligible recipients who have an account with a financial institution that parallels the approach taken during phase one. Therefore, the proposed rule provides no waivers for these recipients, although one or more of the waivers described in subsections (c) through (h) may apply.

Under proposed § 208.4(a), an individual who has an account with a financial institution and who became eligible to receive payment before July 26, 1996, would not be required to receive payment by EFT where the use of EFT would impose a hardship due to either a physical disability or a geographic barrier.

The Act does not define the term ''hardship.'' The legislative history mentions geographical, physical, mental, educational, and language barriers, but does not define these terms. Treasury and the benefit agencies believe that, for the reasons discussed more fully below, three of the five categories mentioned—mental, educational, and language—do not pose a barrier to the use of EFT. These factors can affect an individual's ability to use any method of payment, whether check or EFT, and, therefore, there is no need to provide waivers for these categories. In fact, for many individuals, the safety and reliability associated with EFT outweigh the difficulty associated with a new method of payment.

With regard specifically to mental disabilities, Treasury notes that, as mentioned above in the discussion on ''authorized payment agent,'' some agencies have already provided in their regulations for recipients who are mentally incapable of managing their payments. Under these regulations, an individual or entity may be appointed or otherwise selected to act on behalf of an individual entitled to a Federal payment. For example, when an application for Social Security or Supplemental Security Income benefits is filed by or on behalf of an individual who is not able to manage his or her benefit payment, SSA's regulations provide for the appointment of a representative payee. This person or entity receives the payment and arranges for the funds to be used for the benefit of the individual. The method by

[9] The VA and the RRB report similar experiences.

which payment is made to the representative payee has no effect on the actual recipient.

The proposed rule does not provide waivers based on the recipient's educational level, limited literacy skills, or lack of fluency in English. The experience of Treasury and the benefit agencies suggests that the obstacles posed by these factors are not uniquely associated with the use of EFT. Educational and language barriers can interfere with the comfortable and successful use of any method of payment, including checks and EFT. In implementing EBT, the benefit agencies have found that educational and language barriers present a challenge in making the transition to EFT, but the transitional hurdle is short-lived and ameliorated by educational programs targeted to the specific needs of recipients. The benefit agencies and the financial industry have developed, and are continuing to develop, educational materials that assist recipients with limited education or literacy skills in making the transition to EFT. In addition, Treasury intends to conduct an extensive education campaign on receiving payment by EFT.

Finally, with respect to language, the benefit agencies and the financial industry have programs to assist recipients who do not speak English. For example, in those parts of the country where a language other than English is predominant, SSA employees assist recipients in their native language. In these areas, many ATMs and POS terminals offer the choice of on-screen instructions in the predominant language as well as English. Also, materials provided during the public education campaign will be available in selected languages other than English to accommodate non-English speaking recipients.

Treasury believes, however, that there are two instances in which recipients who have an account with a financial institution and who have previously been receiving payment by check should not be required to convert to receiving payment by EFT; namely, where a physical disability or a geographic barrier would result in a hardship to the individual.

For example, Treasury believes that a waiver should be available to a recipient with a physical disability who currently has an arrangement with a nearby grocery store to cash his or her monthly check, but would have great difficulty traveling even a short distance to a bank or ATM to get his or her payment by EFT. Similarly, Treasury believes that a waiver should be available to someone who lives in a rural area or on an Indian reservation with limited access to transportation or banking facilities and who would have great difficulty getting to a bank or ATM to receive payment by EFT.

The proposed rule does not define physical disability or specify what constitutes a geographic barrier. In the case of physical disability, Federal law contains several definitions, including those found in the Americans with Disabilities Act, the Social Security Act, and the Veterans' Benefits Act. Treasury believes that referencing in Part 208 all applicable definitions of disability would be unwieldy and confusing, and that creating a new definition for purposes of Part 208 would create an unnecessary administrative burden for agencies and recipients. In addition, in light of the approach the proposed rule takes with regard to the waiver process, Treasury does not believe that it is necessary to define physical disability or specify what constitutes a geographic barrier.

Under proposed § 208.4(b), an individual who does not have an account with a financial institution is not required to receive payment by EFT where the use of EFT would impose a hardship on the individual due to a physical disability or a geographic barrier, or where the use of EFT would impose a financial hardship on the individual.

Waivers are provided for individuals with a physical disability or a geographic barrier for the reasons discussed above. In addition, a third waiver category—financial hardship—has been provided for individuals who do not have bank accounts, and for whom Treasury will provide an account as described in § 208.5. Although financial hardship is not mentioned in the legislative history, Treasury is aware that some individuals who do not have accounts with a financial institution cash their checks at grocery stores and other locations at little or no cost. Treasury does not believe that Congress intended such individuals to pay more to receive payment by EFT than they currently pay to receive payment by check, particularly low-income recipients whose Federal payment may be their sole source of income. Therefore, Treasury is proposing to make a waiver available for these individuals on this basis. The financial hardship waiver is not available to recipients who already have accounts with financial institutions because these individuals presumably will not incur any additional expense to receive payment by EFT.

The financial hardship waiver proposed in § 208.4(b) will, as a practical matter, take effect upon the availability of the account described in § 208.5. Under the Act, Treasury is required to ensure that individuals who are required to have an account at a financial institution in order to receive Federal payments will have access to such an account at a reasonable cost and with the same consumer protections as other account holders at the same financial institution. Treasury is in the process of designing such an account. While Treasury is hopeful that the account will be available nationwide by January 2, 1999, and will make every effort to achieve that goal, it is possible that the account will not be available on a nationwide basis by that time. For this reason, the requirement to receive payment by EFT is automatically waived for all individuals who certify that they do not have an account with a financial institution until the earlier of January 2, 2000, or the date as of which the Secretary determines that the account referred to in § 208.5 is available.

Proposed § 208.4(c) provides that an agency is not required to make a payment by EFT where the political, financial, or communications infrastructure in a foreign country does not support payment by EFT. This waiver category responds to concerns expressed by agencies that make international payments. For example, the SSA certifies benefit payments to recipients in 132 countries around the world but, at the present time, international Direct Deposit is available only in 10 countries. Treasury also recognizes that in some countries, payment by EFT is feasible in some areas, such as large cities, but is not feasible outside these areas. In such cases, payments should be made electronically to any area within the country where the necessary infrastructure exists, unless the recipient qualifies for one of the other waivers.

Proposed § 208.4(d) proposes a waiver in those cases where a natural or other disaster makes payment by EFT not feasible. This waiver responds to concerns raised by the Federal Emergency Management Agency and other disaster assistance agencies who advised Treasury that, in areas affected by natural disasters, financial institutions may be closed or inaccessible due to electrical or telecommunications failure or structural damage.

Treasury recognizes that agencies that respond to emergencies must have the flexibility to fulfill their missions, and that providing payments to emergency victims and emergency personnel must

be done in the most efficient and expedient manner possible. Therefore, Treasury is proposing a waiver for disaster assistance agencies making payments to recipients residing in areas that are designated by the President or an authorized agency administrator as a disaster area. The waiver period would last for 120 days from the date the disaster is declared. The disaster assistance agencies indicated that most emergency response phases do not last longer than 120 days and that, after that time, the financial and communications infrastructure typically is restored so that recipients can receive their payments electronically. If the emergency response time exceeds 120 days, the agency is expected to notify Treasury in writing of the need to extend the waiver period. The notification should include a justification for the extension and state the length of the extension period required.

Proposed § 208.4(e) provides a waiver for payments made in response to contingency operations conducted by the Department of Defense. A contingency operation is defined in 10 U.S.C. 101(a)(13) as a military operation that either is designated by the Secretary of Defense as an operation in which armed forces undertake military actions against an enemy or results in a call or order to, or retention on, active duty of members of the armed forces during a war or national emergency declared by the President or Congress.

Proposed § 208.4(f) provides a waiver from the mandatory EFT requirement where payment by EFT may pose a threat to national security, jeopardize the life or physical safety of an individual, or compromise a law enforcement action. Agencies engaged in law enforcement and national security, as well as the military, advised Treasury that in many cases payment by EFT is not feasible or could endanger employees or other individuals. For example, the physical safety of undercover agents or participants in a witness protection program could be jeopardized by the audit trail left by an electronic payment. Under the proposed rule, a waiver also would be available for military or other sensitive operations where the provision of bank routing information to third parties might compromise the security of the operation, thereby jeopardizing national security.

Under proposed § 208.4(g), an agency would not be required to make a payment by EFT if the cost of using EFT for making a non-recurring payment is greater than the cost of making that payment by check. Treasury considers non-recurring to mean a frequency of not more than once in a 12-month period to the particular recipient. In comments and in discussions with Treasury, agencies frequently identified non-recurring payments as a payment class in which a check might be more cost-effective than an EFT given the administrative cost of enrolling a recipient for an ACH payment. Since one of the principal purposes of the Act was to reduce the Government's cost, Treasury believes this is an appropriate waiver category.

Agencies also questioned the wisdom of requiring small dollar payments to be made by EFT. Proposed § 208.4(g) should not be read as a waiver for all small dollar payments. The cost associated with making a $100 payment is proportionately higher than the cost of making a $10,000 payment, regardless of the payment method used. Thus, a factor in addition to the dollar amount of an individual payment is whether it is a small dollar single payment or a small dollar recurring payment.

Proposed § 208.4(h) provides that agencies are not required to make payments by EFT when public necessity suggests that payment by methods other than EFT is in the best interest of the Government. An agency may determine that a need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured if payment were required to be made by EFT. Alternatively, an agency may determine that, where there is only one source for goods or services, payment by a method other than EFT would prevent serious injury to the Government. Unusual and compelling urgency means that there is a need to act without delay to protect a legitimate Government interest. Serious injury means that the Government faces an imminent loss of money or property, or the disruption of a Federal program or activity.

Treasury received a number of comments from agencies expressing concern that the Act would interfere with their efforts to obtain goods or services deemed essential to the agencies' missions in a timely fashion. For example, in some cases, an agency may have only one supplier of an essential material or service, and that supplier may not be able to accept payment by EFT. While the Act clearly requires vendors to accept payment by EFT, Treasury recognizes that, in limited cases, agencies require flexibility in dealing with vendors who are unable to receive EFT payments.

Agencies and other commenters asked Treasury to consider making a waiver available for vendor payments where, because of system limitations or cost, remittance data is not available to the vendor. As noted above, remittance data is information that identifies the payment. This data permits the vendor to reconcile funds received against outstanding invoices.

A number of commenters stressed the importance of passing remittance data on to the vendor, stating that the lack of remittance data is the primary reason why vendors are reluctant to receive payment by EFT. Several commenters noted that many financial institutions lack the capability to provide remittance data to their depositors which requires the translation of data from machine readable to human readable form. It is estimated that of the approximately 11,000 financial institutions which can accept an electronic payment, fewer than a thousand are capable of translating remittance data into a human readable form. In addition, financial institutions sometimes charge their customers for remittance data, which also reduces the incentive for smaller vendors to accept payment by EFT.

Treasury is working with agencies, the financial industry, and vendors to solve the remittance data problem. For example, several pilots are underway to test the feasibility of making remittance data available through a variety of methods, including on an agency's web site. The proposed rule does not contain a waiver for vendor payments because Treasury expects that, as a result of these efforts, the problem of making remittance data readily available will be solved by January 1999. However, Treasury will monitor developments closely and will reconsider the need for a waiver at that time.

Finally, several agencies noted that the Federal Acquisition Regulation (''FAR'') interim rule on Payment by Electronic Funds Transfer, published on August 29, 1996,[10] exempts certain classes of contracts from the Act. Treasury is working with the appropriate agencies to reconcile any differences between the two rules.

E. Section 208.5—Access to Account Provided by Treasury

Proposed § 208.5 provides that where an individual certifies that he or she does not have an account at a financial institution, or where an individual fails to respond to a request for information pursuant to § 208.8, Treasury will, pursuant to the Act's mandate, provide the individual with access to an account at a Federally-insured financial institution selected by Treasury. (All such individuals will, of course, retain

[10] 61 FR 45776.

the right to establish their own account relationships at institutions of their choice.)

This section addresses the problem of delivering Federal payments by EFT to individuals who do not have an account at a financial institution. In order to use Direct Deposit, a recipient must have an account at a financial institution.[11] It is estimated that approximately 10 million individuals who receive Federal payments do not have an account at a bank, savings association, savings bank, or credit union, and, therefore, cannot receive payment by Direct Deposit.

One of Treasury's domestic policy objectives is to encourage individuals who do not have an account at a financial institution to move into the financial services mainstream. Since the Act was passed, Treasury has been working with agencies and the financial industry on educational efforts designed to encourage individuals to open an account at a financial institution so that they can receive their Federal payments by Direct Deposit. In addition, Treasury and the financial industry are participating jointly in the marketing of Direct Deposit Too, which is a model for a simple, low-cost, electronically accessible deposit account. Treasury hopes that many recipients without accounts will open accounts as a result of these public and private sector educational and marketing efforts. However, Treasury recognizes that a certain percentage of individuals who are required to receive payment by EFT, i.e., individuals who are not eligible for a waiver, likely will not have accounts by the January 1999 deadline, and the Act specifically requires that Treasury regulations ensure access to an account by individuals who are required to have an account because of the EFT mandate.[12]

Treasury considered several approaches to implementing this requirement. Several commenters suggested that Treasury require financial institutions to provide a basic account at a reasonable price to individuals without accounts. Treasury does not believe that financial institutions should be required to provide these types of account services as a result of the Act. Another approach involves the development of a model deposit account with an invitation to financial institutions to offer this account, at a specified price or at a price below some ceiling determined by Treasury, to individuals without accounts. Treasury believes that identifying institutions willing to participate in a voluntary program and monitoring their activities would require the creation and maintenance of a regulatory infrastructure. In addition, it is possible that, in some geographic areas, no institutions would be willing to participate, resulting in gaps in coverage.

A third approach is for Treasury to engage one or more Federally-insured financial institutions to act as Treasury's financial agent for the provision of accounts to those individuals. Treasury believes that this approach will enable Treasury to perform its obligation under 31 U.S.C. 3332(i)(2) to ensure that all individuals required to receive payments electronically will have access to an account at a financial institution at a reasonable cost and with consumer protections comparable to those afforded other account holders at such institutions. In addition, a number of consumer organizations strongly urged Treasury to permit only Federally-insured financial institutions to act as agent for Treasury to hold accounts for individuals who do not have such accounts. Treasury takes seriously the concern expressed by these commenters, and specifically invites comment on this issue.

Treasury plans to obtain such account services through a competitive process that will select one or more entities to act as Treasury's agent to provide these services to recipients that do not have, or do not choose to open, accounts at financial institutions of their own choice. Any financial institution designated by Treasury as its financial agent will perform those functions that involve the disbursement of public funds, including the establishment of the recipient's account and the crediting of the Federal payment to the account. Other functions, however, may be performed by non-financial institutions working in partnership with the financial agent.[13]

The proposed regulation does not attempt to define the specific characteristics of the account that will be made available. Following the close of the comment period on this notice of proposed rulemaking, Treasury will develop proposed terms, conditions, and attributes of the account to be offered and will publish this proposal for a limited period of public comment. After evaluating comments received, Treasury will determine the specific terms, conditions, and attributes of the account to be offered and will request that interested organizations submit bids on the cost of providing such an account within defined geographic areas. Bidders also may be requested to submit bids on different permutations of alternative account structures and geographic areas. It is anticipated that such accounts will be offered on the basis of a specified periodic service charge paid by the recipient.

Treasury believes the design of these Federally-provided accounts is critical to the successful implementation of the Act. While no final decisions have been made as to the attributes of the account, it is the preliminary view of Treasury that each recipient should have an individual account at a Federally-insured financial institution that can be directly accessed via plastic debit card at any location of that institution, including any automated teller machines or point-of-sale terminals that accept transactions by the institution's cardholders. Treasury has retained the services of a consultant to evaluate and provide advice to Treasury with respect to both the account structure and the design of the competitive selection process for the account providers. In addition, Treasury is seeking public comment on this subject.

Commenters are encouraged to provide their views on any issues that they believe are important to the successful design of this new account. In submitting views, commenters should consider that the cost of the account to be offered by bidding institutions is likely to be affected by the range of attributes required to be included in the account, as well as the institutions' expected average balance, i.e., float, for the account. In particular, Treasury requests comments on the following questions:

- Should Treasury make available a debit card-based account to individuals who are required to receive Federal payments by EFT and who do not have an account of their own with a financial institution?
- Should the cost of the account to the recipient be the most important factor for selecting the account structure and/or the account providers, or should the account structure be designed to meet other objectives even if the cost to recipients is increased as a result? If the latter, which objectives? What is an appropriate standard by which to weigh tradeoffs between increased costs and additional account features?
- Should the account be structured to provide only a basic withdrawal service at the lowest possible cost, with additional service charges for additional features, or should the account offer a range of services at a fixed monthly cost,

[11] See 31 CFR 210.4(a).

[12] 31 U.S.C. 3332(i)(2).

[13] The notice of proposed rulemaking for Treasury's rule relating to electronic benefits transfer, 31 CFR Part 207, describes the disbursement of public funds and the statutory basis for the use of financial agents. 62 FR 25572.

even if greater than the cost of a basic account?

- How many withdrawals should be included in the base price of the account? Should the account terms address the charges imposed by automated teller machine owners other than the account provider?
- Should the account structure provide for additional electronic or nonelectronic deposits within the basic monthly service charge? If so, what number of deposits?
- Should the account provide for some number of third-party payments, such as payments for rent or utility bills? If so, how many third party payments should be provided for and should they be priced in the basic monthly service charge?
- Should the account include a savings feature? How would such a feature operate? Would additional free withdrawals or the capability to accept deposits other than the Federal payment act to foster savings by the recipient?
- How important is a broad geographic reach to meeting the access objectives that most recipients will want? How should Treasury best meet access needs in underserved areas?

Treasury has been urged to adopt restrictions for the account that it furnishes that would preclude arrangements between the financial institution at which the account is maintained and third parties, such as check cashers and money transmitters, under which recipients might be provided with additional means of accessing the account. Those favoring such restrictions argue that recipients should be protected against excessive charges that might be imposed for such services. These arguments raise important concerns, particularly with respect to low-income recipients who have in the past paid high fees to cash government checks. In light of these concerns, Treasury requests comment on some additional questions relating to the account it will design and make available to recipients who do not have bank accounts:

- Should access to the account be provided at outlets in addition to those normally offered by the financial institution providing the account? For example, should arrangements be permitted under which third parties may offer other means by which a recipient may, in effect, withdraw funds from the account. If yes, should there be any restrictions on where additional access may be provided or under what terms it can be offered?
- If additional access is offered through arrangements with third parties, should the cost of this additional access be included in the pricing proposal in the competitive bid process?
- Which account design would provide the appropriate opportunity for non-financial institutions to participate in the delivery of services to Federal payment recipients?

Treasury will make every effort to ensure that the account referred to in § 208.5 will be available throughout the country by January 2, 1999. Moreover, Treasury has been working with a number of States to link the delivery of Federal payments to State EBT programs. Where such linkage occurs, recipients who receive a Federal payment, such as Supplemental Security Income, as well as benefits under a State-administered program, for example, Food Stamps, will be offered an option of accessing both benefits by means of a single card. However, as discussed above in connection with proposed § 208.4(b), in the event that the account described in § 208.5 is not available, the requirement to receive a Federal payment by EFT will be waived for individuals who certify that they do not have an account with a financial institution until the earlier of January 2, 2000, or the date as of which the Secretary determines that the account is available.

F. Section 208.6—Account Requirements

Proposed § 208.6 addresses account requirements for Federal payments made by EFT. The proposal sets forth a general rule for all Federal payments, and then provides two exceptions from the general rule for situations that involve an authorized payment agent or an investment account established through a registered securities broker or dealer.

Under § 208.6(a), all Federal payments made by EFT must be deposited into an account in the name of the recipient at a financial institution, unless one of the exceptions described in subsection (b) applies. The requirement to deposit the payment into an account in the name of the recipient [14] is consistent with Treasury's regulations governing use of the ACH [15] and thus provides continuity with existing arrangements for the Direct Deposit of Federal payments.

Proposed § 208.6(b)(1) addresses cases in which an authorized payment agent has been selected or designated. In such cases, the account may be titled in any manner that satisfies the regulations of the appropriate agency. See the discussion of ''authorized payment agent'' in the section-by-section analysis of § 208.2(b) above.

Proposed § 208.6(b)(2) permits a Federal payment to be deposited into an account in the name of a broker or dealer registered under the Securities Exchange Act of 1934 with whom the recipient has an account. Treasury is aware that many brokers and dealers offer services that combine investment and transaction features. In these services, funds deposited into an account at a financial institution—which may be in the name of the securities broker or the name of the customer—are swept out of such an account on a regular basis and into an investment vehicle owned by the recipient. When the customer uses the funds for transaction purposes, whether by credit or debit card or check, the funds needed to cover the transaction are transferred out of the investment vehicle.

Such services offer cash management features, and Treasury sees no reason to discourage recipients of Federal payments from using these services, provided certain protections are available, namely, that the broker or dealer is registered under the Securities Exchange Act of 1934 and that the recipient's funds are protected by deposit insurance during the time the funds are on deposit at the financial institution.

The registration requirement ensures that the broker or dealer is subject to certain basic requirements such as membership in the appropriate self-regulatory organization, membership in the Securities Investor Protection Corporation, recordkeeping and reporting requirements, and net capital requirements. In addition, such brokers and dealers are subject to inspections by the Securities and Exchange Commission and the self-regulatory organizations. The requirement that the account and associated records be structured so that the recipient's interest is protected under applicable Federal or state deposit insurance regulations ensures that the recipient's interest in a master account is individually insured to the same extent it would be if the account were in the name of the recipient alone.

Other than payments made to an authorized payment agent or an investment account, Federal payments made by EFT must be deposited to an account at a financial institution. The proposed rule is silent on the role that non-financial institutions may play in the delivery of Federal payments to

[14] Section 208.6 would not prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family so long as the recipient has the right to withdraw funds from the account.

[15] 31 CFR 210.4.

recipients with bank accounts and the relationship between non-financial institutions and such recipients. Treasury anticipates that non-financial institutions will continue to have the opportunity to partner with financial institutions and to market products and services to recipients. Treasury's research and the comments received on the interim rule indicate that non-financial institutions have performed such functions in the past and are developing new products and services that will allow them to serve recipients who receive their Federal payments by EFT. Treasury specifically invites comments on this opportunity for market innovations.

The use of such products and services would be purely voluntary on the part of recipients who would continue to be able to access their payments directly at a financial institution of their choice if they chose not to use the services of a non-financial institution. These relationships are distinguished from the account that Treasury proposes to provide for individuals who do not have an account with a financial institution. *See* § 208.5.

Treasury has been urged to interpret the Act as requiring regulation of the fees charged by financial institutions and the imposition of certain consumer protections on the services they offer. Consumer organizations urged Treasury to limit the fees that authorized payment agents may charge for their services, and suggested that reasonable costs for recipients without bank accounts should range from no cost to low cost. Some commenters suggested that Treasury either subsidize or regulate account fees. Other commenters stated that efforts to reduce costs for the Government should not place an undue financial burden on the private sector. These commenters opposed Treasury's defining ''reasonable cost'' or establishing limits on fees, and expressed concern that their costs would exceed any ceiling on fees set by Treasury. They considered ''reasonable cost'' to include all costs plus a reasonable profit and argued that to regulate otherwise would discourage the private sector from developing systems to address problems posed by the electronic payment mandate.

Section 3332(i)(2) provides:

> Regulations under this subsection shall ensure that individuals required under subsection (g) to have an account at a financial institution because of the application of subsection (f)(1)—
>
> (A) will have access to such an account at a reasonable cost; and
>
> (B) are given the same consumer protections with respect to the account as other account holders at the same financial institution.

This provision could possibly be interpreted in two ways. The requirement that Treasury ensure access to an account could be read very broadly to refer to all individual recipients who receive their Federal payments by EFT, whether or not they already have an account. Such a broad interpretation potentially would place Treasury in the position of determining the reasonableness of prices charged by thousands of financial institutions, for a wide variety of account services, to individuals who have account relationships at institutions they have chosen voluntarily.

Section 3332(i)(2) also could be read more narrowly as referring to those individuals who, as of January 2, 1999, have not voluntarily selected or opened an account at a financial institution and who will need access to such an account in order to receive a Federal payment by EFT.

Treasury believes the latter interpretation is the better one, i.e., that § 3332(i)(2) should be read to require Treasury to provide ''unbanked'' individuals with access to a reasonably-priced account at a financial institution. Treasury does not believe that there should be widespread regulation of the prices of deposit services voluntarily obtained by recipients in a competitive marketplace. Gathering information about the prices charged for accounts by financial institutions throughout the United States and evaluating those prices to determine their reasonableness would impose a heavy administrative burden both on the industry and on Treasury. In addition, widespread price regulation would interfere with the functioning of the market for account services. Accordingly, the reasonable cost and consumer protection standards will be applied as specified in § 208.5 to any account provided by Treasury to individuals who do not otherwise have access to an account.

G. Section 208.7—Agency Responsibilities

Section 208.3 of the proposed rule sets forth the general rule that, effective January 2, 1999, all Federal payments for which a waiver is not available must be made by EFT. Proposed § 208.7 describes the agencies' operational responsibilities in carrying out this mandate.

First, under proposed § 208.7(a), an agency must collect from each recipient who is required to receive payment by EFT and who has an account with a financial institution the information required to make the payment. This information can be collected electronically through the ACH system by use of an Automated Enrollment Entry (ENR). The ENR is a new ACH entry that was specifically designed to meet the needs of agencies as a replacement for the paper form that has been used for enrollment in the Direct Deposit program. The phrase, ''who is required to receive payment by electronic funds transfer,'' is an acknowledgment that waivers will apply in some cases.

Under this section, agencies are required to collect the information needed to make a payment through the ACH network, namely, the recipient's account number and the financial institution's name and routing number. Treasury encourages agencies to collect this information at the earliest possible opportunity in their dealings with potential recipients of Federal payments. For vendor payments, agencies are encouraged to collect this information as a condition of awarding a contract, issuing a purchase order, or formalizing an agreement to obtain goods or services. Collection of this information as a condition of award ensures that the agency is doing business only with vendors who are willing and able to accept an EFT payment and consequently ensures that all vendor payments, unless waived under § 208.4, will be made by EFT.

In order to ensure compliance by January 2, 1999, agencies must take action as early as possible in 1998 to inform recipients who still receive checks of the requirement to convert to EFT. Collection of the required information should begin no later than July 1, 1998, and recipients should be encouraged to convert to EFT as soon as possible.

Under proposed § 208.7(b), agencies are directed to obtain from individuals who do not have an account at a financial institution a written certification that the individual does not have an account with a financial institution unless the individual has determined that he or she needs a hardship waiver. Treasury will provide individuals who certify that they do not have an account with access to an account in accordance with § 208.5.

Proposed § 208.7(c) directs agencies to obtain from any individual who applies for a waiver under § 208.4 (a) or (b) a written certification that receiving payment by EFT would impose a hardship. As indicated above, agencies may rely upon the individual's assertion that a hardship exists; Treasury does not expect agencies to go beyond the certification to evaluate the individual's circumstances.

H. Section 208.8—Recipient Responsibilities

Proposed § 208.8(a) implements 31 U.S.C. 3332(g), which requires recipients of Federal payments who are required to receive payment by EFT to designate a financial institution or an authorized payment agent to which payment will be made and provide the agency that makes or authorizes the payment with the information needed in order to deliver the payment by EFT. Under the Privacy Act (5 U.S.C. 552a), such information is considered confidential with respect to individuals, and may not be disclosed by the agency except as authorized by law.

Proposed § 208.8(b) provides that an individual who is required to receive payment by EFT and who does not have an account at a financial institution must certify in writing to the agency making the payment that he or she does not have an account. Such an individual will be provided with access to an account provided by Treasury unless he or she is eligible for a waiver. See the discussion of § 208.5 above.

Proposed § 208.8(c) requires all individuals who apply for a waiver under § 208.4 (a) or (b) to certify in writing that receiving payment by EFT would impose a hardship. As discussed above in the section-by-section analysis of § 208.4, an individual's certification would be based on the individual's own evaluation of his or her circumstances.

I. Section 208.9—Compliance

Section 208.9 of the proposed rule provides for Treasury to monitor agencies' compliance with the EFT mandate. It further provides that agencies that fail to make payment by EFT as required under this part may be assessed a charge in accordance with 31 U.S.C. 3335.

Treasury expects agencies to be in compliance with the Act and this part by January 2, 1999, and will begin to monitor compliance as of that date. In order to avoid placing an unnecessary administrative burden on agencies, Treasury does not intend to impose an ongoing reporting requirement on agencies that are in compliance with the EFT mandate. Agencies found to be in noncompliance, however, may be required to submit information on the methods by which they make payments. Further, such agencies may be assessed a charge equal to an amount determined by the Secretary to be the cost to the general fund of the Treasury caused by such noncompliance.

J. Section 208.10—Reservation of Rights

Proposed § 208.10 specifically authorizes the Secretary to waive any provision of the rule. This provision has been included in the event that circumstances make such a waiver necessary or appropriate. Under this provision, the Secretary could grant a waiver not specifically provided for in this part without having to amend the rule.

IV. Special Analysis

Although it has been determined that this proposed regulation is a significant regulatory action for purposes of section 3(f)(4) of Executive Order 12866, the Office of Management and Budget (''OMB'') has waived the preparation of a Regulatory Assessment.

Pursuant to the Regulatory Flexibility Act, it is hereby certified that the proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Treasury has included eight categories of waivers in the proposed rule. The first two categories are designed specifically to alleviate hardships that might be imposed on individuals, including sole proprietors, as a result of the mandatory conversion from check to EFT. Further, the proposed rule does not prohibit small entities from participating in the delivery of services to recipients who receive their Federal payments by EFT. Therefore, Treasury believes the rule does not have a significant economic impact on a substantial number of small entities and that a regulatory flexibility analysis is not required. Treasury welcomes, however, all comments and specifically any comments related to the impact of the proposed rule on small entities.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in the proposed rules be submitted to the OMB for review and approval. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Office for the Department of the Treasury, Financial Management Service, Washington, D.C. 20503, with copies to Jacqueline Perry, Public Reports Clearance Officer, Financial Management Service, 3361 75th Avenue, Landover, Maryland 20785.

The collection of information in this proposed regulation is contained in § 208.8. The information (name of financial institution, routing number, and account number) is required to enable an agency to pay a recipient of a Federal payment by EFT. The collection of information is mandatory. Section 3332(g), as amended, requires recipients of Federal payments to ''provide to the Federal agency that makes or authorizes the payments information necessary for the recipient to receive electronic funds transfer payments.'' The likely respondents vary depending on the agency making the payment. For the Service, the likely respondents are employees of the Service who currently receive payments, such as payments for salary, travel reimbursement, or retirement, by check; and individuals and vendors that currently receive vendor payments by check.

The estimated total annual reporting burden is 46 hours. The estimated burden hours per respondent is 0.25 hours. The estimated number of respondents is 183. These figures represent the burden imposed by the Service. The reporting burden imposed by other agencies will be addressed by those agencies.

Comments are specifically requested on:

1. Whether the proposed collection of information is necessary for the proper performance of functions of the Service, including whether the information will have practical utility;

2. The accuracy of the estimated burden associated with the proposed collection of information;

3. How the quality, utility, and clarity of the information to be collected may be enhanced; and

4. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques and other forms of information technology.

List of Subjects in 31 CFR Part 208

Accounting, Banks, Banking, Electronic Funds Transfer.

Authority and Issuance

For the reasons set out in the preamble, Part 208 of Title 31 is proposed to be revised to read as follows.

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

Sec.

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3301, 3302, 3321, 3325, 3327, 3328, 3332, 3335, and 6503.

§ 208.1 Scope and application.

This part applies to all Federal payments made by an agency and, except as specified in § 208.4, requires such payments to be made by electronic funds transfer. This part does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

§ 208.2 Definitions.

(a) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States.

(b) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(c) *Electronic funds transfer* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House transfers, Fedwire transfers, and transfers made at automated teller machines and point-of-sale terminals. For purposes of this part only, the term electronic funds transfer includes a credit card transaction.

(d) *Federal payment* means any payment made by an agency.

(1) The term includes, but is not limited to:

(i) Federal wage, salary and retirement payments;

(ii) Vendor and expense reimbursement payments;

(iii) Benefit payments; and

(iv) Miscellaneous payments including, but not limited to: interagency payments; grants; loans; fees; principal, interest, and other payments related to U.S. marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(2) For purposes of this part only, the term ''Federal payment'' does not apply to payments under the Internal Revenue Code of 1986.

(e) *Financial institution* means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term ''depository institution'' means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) Any savings association (as defined in section 3 of the Federal Deposit Insurance Act) (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 et seq.) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.); and

(2) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(f) *Individual* means a natural person.

(g) *Recipient* means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(h) *Secretary* means Secretary of the Treasury.

(i) *Treasury* means the United States Department of the Treasury.

§ 208.3 Payment by electronic funds transfer.

Subject to § 208.4, and notwithstanding any other provision of law, effective January 2, 1999, all Federal payments made by an agency shall be made by electronic funds transfer.

§ 208.4 Waivers.

Payment by electronic funds transfer is not required in the following cases:

(a) Where an individual who became eligible for a Federal payment before July 26, 1996, and who has an account with a financial institution, certifies that payment by electronic funds transfer would impose a hardship on him or her due to a physical disability or geographic barrier;

(b) Where an individual certifies that he or she does not have an account with a financial institution and that payment by electronic funds transfer under § 208.5 would impose a hardship due to a physical disability or geographic barrier, or would impose a financial hardship. In addition, the requirement to receive payment by electronic funds transfer is automatically waived for all individuals who certify that they do not have an account with a financial institution until the earlier of January 2, 2000, or the date as of which the Secretary determines that the account referred to in § 208.5 is available;

(c) Where the political, financial, or communications infrastructure in a foreign country does not support payment by electronic funds transfer;

(d) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area. This waiver is limited to payments made within 120 days after the disaster is declared;

(e) Where either:

(1) A military operation is designated by the Secretary of Defense in which armed forces undertake military actions against an enemy, or

(2) A call or order to, or retention on, active duty of members of the armed forces is made during a war or national emergency declared by the President or Congress;

(f) Where a threat may be posed to national security, the life or physical safety of any individual may be endangered, or a law enforcement action may be compromised;

(g) Where the payment is non-recurring and the cost of making the payment via electronic funds transfer exceeds the cost of making the payment by check. For purposes of this rule, ''non-recurring'' means the agency does not expect to make more than one payment to the same recipient within a one-year period; and

(h) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than electronic funds transfer; or, where there is only one source for goods

or services and the Government would be seriously injured unless payment is made by a method other than electronic funds transfer.

§ 208.5 Access to account provided by Treasury.

Where the requirement to pay by electronic funds transfer is not waived under § 208.4 and an individual either certifies that he or she does not have an account with a financial institution, or fails to provide information pursuant to § 208.8, Treasury shall provide the individual with access to an account at a Federally-insured financial institution selected by Treasury. Such account will be provided at reasonable cost to the individual and with the same consumer protections as other accounts at the same financial institution.

§ 208.6 Account requirements.

(a) All Federal payments made by electronic funds transfer shall be deposited into an account at a financial institution. The account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b) (1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account established through a securities broker or dealer registered under the Securities Exchange Act of 1934, such payment may be deposited into an account in the name of the broker or dealer, provided the account and all associated records are structured so that the recipient's interest is protected under applicable Federal or state deposit insurance regulations.

§ 208.7 Agency responsibilities.

An agency shall:

(a) Obtain from each recipient who is required to receive payment by electronic funds transfer and who has an account with a financial institution, the information required to make such payment;

(b) Obtain from each individual who is required to receive payment by electronic funds transfer and who indicates that he or she does not have an account with a financial institution, a written certification that the individual does not have an account with a financial institution; and

(c) Obtain from each individual who applies for a waiver under § 208.4(a) or (b) a written certification that receiving payment by electronic funds transfer would impose a hardship.

§ 208.8 Recipient responsibilities.

(a) Each recipient who is required to receive payment by electronic funds transfer and who has an account with a financial institution must, within the time frame specified by the agency making the payment, designate a financial institution through which the payment may be made and provide the agency with the information requested by the agency in order to effect payment by electronic funds transfer.

(b) Each individual who is required to receive payment by electronic funds transfer and who does not have an account with a financial institution must certify in writing, within the time frame specified by the agency making the payment, that he or she does not have an account with a financial institution. Such individual will be provided an account as indicated in § 208.5.

(c) Each individual who qualifies for, and wishes to apply for, a waiver under § 208.4(a) or (b) must certify in writing, within the time frame specified by the agency making the payment, that receiving payment by electronic funds transfer would impose a hardship.

§ 208.9 Compliance.

(a) Treasury will monitor agencies' compliance with this part. Treasury may require agencies to provide information about the methods by which they make payments.

(b) If an agency fails to make payment by electronic funds transfer, as prescribed under this part, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

§ 208.10 Reservation of rights.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of the regulations in this part in any case or class of cases.

Dated: September 11, 1997.

Russell D. Morris,

Commissioner.

[FR Doc. 97–24553 Filed 9–15–97; 8:45 am]

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Federal Register

Tuesday
September 16, 1997

Part III

The President

Presidential Determination No. 97–32—Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 62, No. 179
Tuesday, September 16, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–32 of September 12, 1997

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on August 27, 1996 (61 Fed. Reg. 46529), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1997.

I hereby determine that the extension for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

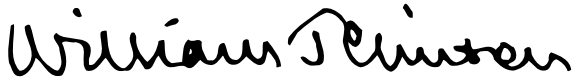
Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for 1 year, until September 14, 1998, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505; and

(3) the Cuban Assets Control Regulations, 31 CFR Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 12, 1997.

[FR Doc. 97–24790
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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